Calendar No. 2622

84TH CONGRESS, 2d Session | SENATE | REPORT No. 2582

AUTHORIZING THE SECRETARY OF THE INTERIOR TO EXECUTE A CONTRACT WITH THE TULE LAKE IRRIGATION DISTRICT, CALIFORNIA

JULY 16, 1956.—Ordered to be printed

Mr. KUCHEL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 12034]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 12034) to authorize the Secretary of the Interior to execute a contract with the Tule Lake Irrigation District, California, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

H. R. 12034, introduced in the House by Representative Engle, of California, authorizes the Secretary of the Interior to execute a repayment contract with the Tule Lake Irrigation District of the Klamath project in northern California. This legislation is the result of many years of negotiations between the Bureau of Reclamation and the settlers on the Tule Lake division of the Klamath reclamation project.

The contract authorized provides for full repayment of the Federal cost of constructing the irrigation works to serve the Tule Lake district. The payments will be made from construction charges and from net revenues received from the lease of Federal lands in the project area now credited to the district, as well as from miscellaneous credits. No writeoffs of construction charges are authorized and in effect the legislation will have the effect of providing increased returns to the Federal Treasury.

The bill leaves open for further action by the Secretary of the Interior the question of what portions of the undersettled lands in the division shall be open to homesteading and what part shall be dedicated to fish and wildlife purposes. The Secretary of the Interior, as have his predecessors for many years, has before him extensive studies by the Bureau of Reclamation and the Fish and Wildlife

Service with respect to what portion of the unsettled lands shall be placed under irrigation and opened to homesteading and what portion shall be dedicated to fish and wildlife purposes. This issue has been a matter of controversy for nearly a quarter of a century and the committee feels that a decision should be made as promptly as possible so as to settle the controversy.

EXPLANATION OF THE BILL

The repayment contract negotiations between the district and the Bureau of Reclamation resulted in the approval, as to form, by the Secretary of the Interior on November 19, 1955, of a repayment contract. Negotiations in one form or another had been in progress for many years before the formation of the Tule Lake Irrigation District in 1952. The voters of the district, at a special election on July 2, 1956, approved the contract. As of June 30, 1955, the cost of irrigation facilities and related works to serve the Tule Lake division approximated $10,200,000. Up to the same date, approximately $6 million had been received by the Department of the Interior on lease revenues from public lands in the area which have been applied to discharge the contract expenditures of the Tule Lake division. This reimbursement from the net revenues received from the lease of grazing and farming lands owned by the United States within the Tule Lake division was authorized by a proviso in the Interior Department Appropriation Act of 1941 (54 Stat. 406, 436). For the last several years lease revenues have averaged approximately $500,000 annually. Under a possible interpretation of the existing law cited the continued application of the lease revenues to the discharge of the Tule Lake division irrigation construction cost would virtually wipe out all of the construction charges. The Department of the Interior, however, has taken the position that the water users should assume a reasonable cash payment to the Federal Government for the irrigation facilities serving the public land areas which have been homesteaded rather than for lease revenues to be used for the discharge of the entire obligation. For many years the settlers had contended that the water users were entitled to all lease revenues under existing law. As a result of the negotiations conducted, a compromise was reached and under the provisions of the contract the district agrees to a reduction in benefits which might have been available to it under some interpretation of existing law.

The contract provides for the water users to repay a total of $3,544,100.50, in 40 years, at the rate of $85 an acre for all land that has been settled. A charge of $85 an acre for all public land within the district that is settled in the future pursuant to the homestead laws would be applied.

On the construction charges, the district will be credited the sum of 30 percent annually of all net lease revenues received at a rate not to exceed $50,000 per year until the year 2020. After all construction charges are repaid, 10 percent of all net lease revenues annually will be credited to the district. All costs in excess of the construction charges payment set forth in the contract will be paid by the application of future lease revenues or other credits due the Tule Lake division.

The district will assume operation and maintenance of the physical works of the division which must be operated with first priority for irrigated agriculture.

A review of the repayment problems on the Tule Lake division indicates that the repayment problems of the district have been due to causes other than those usually relating to inadequate repayment capacity, insecurity as to water supply, or other factors which usually confront the Department, the irrigators, and congressional committees in working out solutions of this character. The controversy between the water users and the Department of the Interior has arisen primarily because of differences in interpretation of existing law as to what amounts of the abundant lease revenues should be credited to the district.

The remaining problem with respect to the wildlife situation is one that the Secretary of the Interior should endeavor to settle promptly. The Tule Lake and lower Klamath refuges have been held to be vital to the maintenance of the Pacific flyway for waterfowl. On the other hand, the demand for the opening of additional lands in the area for homesteading has been persistent. Repeated studies have been made as indicated by the Bureau of Reclamation and the Fish and Wildlife Service which have come up with differing recommendations. H. R. 12034 is drawn so as to carefully avoid any indication that the legislation points the way to a settlement of this controversy.

The conservation organizations are insistent that homesteading should not be further expanded. On the other hand, the settlers of the Tule Lake division have pressed continuously for further homesteading in the area, notwithstanding the fact that the opening of the land to settlement would further reduce financial credits from lease revenues.

ADDITIONAL FEATURES OF THE BILL

Other features of the bill include the following:

The Modoc unit of the Tule Lake division will be terminated as a separate entity. Lands in lower Klamath Lake which were added to the Modoc unit in 1944 are to be detached from that unit and from the Tule Lake division and established as a separate division of the Klamath project. Section 3 directs the Secretary to apply net revenues from Government operations of the Klamath project in excess of those required to carry out other provisions of the bill, to assist financially water users on future divisions or units of the project which may hereafter be authorized. This assistance would be extended to lands in the Tule Lake Irrigation District.

Section 4 assures continued leasing of land within the Tule Lake Irrigation District in the same manner and for the same crops as in the past until such time as the Secretary of the Interior reaches a decision as to homesteading or future uses of these lands.

COMMITTEE RECOMMENDATION

On the basis of the representations made on behalf of H. R. 12034, examination of the contract referred to, and other pertinent factors, the committee concludes that H. R. 12034 which approved the contract and authorizes its execution should be recommended for passage.

COMMUNICATION FROM THE DEPARTMENT OF THE INTERIOR

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., June 28, 1956.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.

MY DEAR MR. ENGLE: A report has been requested from this Department on H. R. 11409, a bill to authorize the Secretary of the Interior to execute a contract with the Tule Lake Irrigation District, California, and for other purposes.

The repayment contract referred to in the title and text of the bill was negotiated pursuant to section 7 of the Reclamation Project Act of August 4, 1939 (53 Stat. 1187, 1192; 43 U. S. C., sec. 485f), and was approved as to form by the Secretary of the Interior on November 9, 1955. It has been determined from detailed physical and economic analysis that a contract under sections 3 and 4 of the Reclamation Project Act of 1939 would not be practicable, nor provide an economically sound adjustment of the repayment problem here involved. In our opinion, the proposed contract provides, as explained below, fair and equitable treatment of the repayment problems of the Tule Lake division of the Klamath Federal reclamation project and is in keeping with the general purposes of the 1939 act. We are enclosing four copies of the proposed contract.

We recommend enactment of H. R. 11409. Several minor amendments are also recommended.

The Tule Lake Irrigation District comprises lands in Modoc and Siskiyou Counties of California on the Tule Lake division of the Klamath Federal reclamation project. The Klamath project was authorized May 15, 1905, by the approval of the Secretary of the Interior of a report of a board of engineers.

The entire project comprises an irrigable area in excess of 217,000 acres and utilizes water of the Lost and Klamath Rivers. The Tule Lake division of the project consists of former public lands and State lands. The State lands were ceded to the United States by the States of Oregon and California. The cession act of the Oregon Legislature was approved January 20, 1905, and that of the California Legislature was approved February 3, 1905. The act of Congress of February 9, 1905 (33 Stat. 714) authorized the Secretary of the Interior to change the level of Tule Lake and dispose of the lands ceded to the United States by the respective State cession acts.

These lands formerly under Tule Lake were reclaimed in large part as a result of the storage and diversion works of the Klamath project. Nearly 10,000 acres (2,000 in Oregon; 8,000 in California) were first opened to homesteading by Public Notice No. 13 dated September 29, 1922. At the time of this land opening, the announced construction charge of $90 per acre seemed high as compared with construction charges for private lands of the project which had been established as recently as 1917 and as compared with the selling prices of farmland in the area. As a result, the notice was suspended by order No. 14 dated January 15, 1923, prior to the expiration of the preference right for veterans, and several investigations were conducted by both the Department of the Interior and the Congress. The Board of Survey

and Adjustment, authorized by the act of December 5, 1924, recommended certain financial adjustments (H. Doc. No. 201, 69th Cong., p. 26). Provision was made by section 15 of the act of May 25, 1926 (44 Stat. 636, 639) for the Secretary of the Interior to adjust the construction charge for these lands.

On January 22, 1927, by order No. 19, additional lands of the Tule Lake division were opened to entry. This order provided for water-rental charges pending formation of an irrigation district and execution of a joint liability contract. The construction charge fixed in this order was $88.35 an acre which was also to be applied to the lands entered under Public Notice No. 13. In the event a joint liability contract was not executed, it was stated in that order that certain credits would not be extended to the lands and a higher charge not taking into account any credits, would be required to be repaid. Subsequent entries occurred through 1948, and by this time more than 35,000 acres had been homesteaded in 506 farm units.

Under subsection I of the act of December 5, 1924, lease revenues and other credits in excess of $1 million accumulated through June 30, 1940. By 1938, however, it had become apparent that return flows from the project and flood flows entering the sump were going to limit seriously the reclamation of lands in the bed of former Tule Lake and the production of lease revenues. Moreover, these irrigated lands and the sump were attracting birdlife, but the inability to control the water levels was seriously affecting this birdlife through botulism. As a result, a joint survey was initiated in 1938 by the Bureau of Reclamation and the Bureau of Biological Survey to determine methods of improving the conditions in the Tule Lake sump and in lower Klamath Lake. A program for remedial construction was proposed in connection with the 1941 Interior Appropriation Act. Specific language was written into this act the effect of which was to terminate the application of lease revenues to part I of Tule Lake, being that part of the division first settled, and to apply those revenues to the cost of the construction of the Modoc unit.

In the legislation approving the contract with the Klamath Drainage District on the Klamath project, approved June 17, 1944 (58 Stat. 279), the method of application of lease revenues in the Lower Klamath area was established and the lands in California, formerly considered a part of the Lower Klamath division, were severed from that division and included in the Tule Lake division as a part of the Modoc unit from which these lands derive a large portion of their water supply and other benefits. Some 9,100 acres of lease lands in the Coppock Bay area were provided with irrigation and drainage facilities as a part of the development of the Modoc unit. In 1947 and 1948 these lands were opened to homesteading. During 1950 and 1952 additional works were constructed to provide flood protection for these lands.

Early in 1950 the Bureau of Reclamation began urging the formation of a district embracing all of the lands in California in the former Tule Lake bed. The formation of this district, known as the Tule Lake Irrigation District, was completed in early 1952 after an overwhelming vote by the water users in favor of its organization. Negotiations for a repayment contract began with this district on July 14, 1952. Differences of opinion over the costs allocable to the present water users and the application of future lease revenues had to be resolved or otherwise overcome.

As of June 30, 1955, the cost of the facilities serving the lands initially settled and embracing what is known as Tule Lake division, part 1, was approximately $3,117,760. The separate cost of the facilities of the Modoc unit, including those in Tule Lake division, part 2, which was settled after the end of World War II, is approximately $7,100,000. Approximately $6 million in lease revenues had been received by the Bureau of Reclamation through June 30, 1955. Lease revenues for the last 6 years have averaged approximately $500,000 per year and are expected to remain at this level until additional lands in the sump are settled.

The proposed contract represents a compromise between this Department's position that the water users of the district should make a reasonable cash payment to the Government for the construction of the irrigation facilities serving the public land which they received as homesteaders, irrespective of a possible interpretation of the act of December 5, 1924, which would result in lease revenue credits sufficient to discharge virtually all construction charges, and the contention of the district representatives that the water users are entitled to all lease revenues. As finally approved by the district board of directors, the contract provides that the water users will repay $3,544,100.50 ($85 per acre) for all land that has been settled and $85 per acre for all public land that is settled within the district in the future pursuant to the homestead laws. It has been agreed to allow the district as credits on these construction charges during the time that construction charges are being paid, but in no event after the year 2020, the sum of 30 percent annually of all net lease revenues received, but not more than $50,000 per year. After all construction charges are repaid, the district will receive annually 10 percent of all net lease revenues. While the actual construction charge to be paid after the lease credits have been applied will depend in part upon when and if additional lands are settled, the number of acres opened for settlement, and the amount of future annual lease revenues, analyses prepared in the Bureau of Reclamation indicate that the actual cash repayment by the water users may be as little as $35 to $50 per acre. The bill provides for the repayment of all costs in excess of the construction charge payment due under the contract, by the application of future lease revenues or other credits due to the Tule Lake division.

In article 4 of the proposed contract provision is made for the district to make payments of a proportionate share of these lease revenues to the water users in Oregon whose lands are a part of the Tule Lake division but outside the Tule Lake Irrigation District's boundaries. These water users are under a joint liability contract between the United States and the Klamath Irrigation District and action has recently been taken by this Department to collect payments from these landowners.

In addition to providing for the adjustment of the construction charge and handling of future lease revenue credits, the contract by article 8, limits expansion of the farming activity of the Fish and Wildlife Service in the Tule Lake National Wildlife Refuge. This provision has been agreed to by that Service. All other provisions of the contract are in general conformance with other contracts which have been executed by this Department.

Among the purposes of H. R. 11409 would be the termination of the Modoc unit of the Tule Lake division as a separate entity. The

lands in Lower Klamath Lake in California which were added to the Modoc unit by the act of June 17, 1944, are to be detached from that unit and the Tule Lake division and established as a separate division of the project.

Section 3 of the bill directs the Secretary to apply net revenues from Government operations on the Klamath project in excess of those required to carry out other provisions of the bill to assist water users on future divisions or units of the project which may hereafter be authorized in repaying costs beyond their ability to repay. It is expected that we will be guided by previous legislation and permit the use of these revenues only where the water users are unable to make payment.

We suggest, by way of amendment of the bill, (1) that the words (p. 1, lines 8 and 9) "approved at an election of the district held on May 29, 1956" be deleted and that there be substituted for them the words "approved as to form by the Secretary on November 9, 1955"; (2) that the words "article 4 of" on page 2, line 5, be deleted; (3) that there be added on page 3, line 18, a new sentence reading as follows: "Nothing contained in this subsection shall authorize the levying or collection of charges on account of project construction on lands utilized by the Fish and Wildlife Service in any National Wildlife Refuge. Any project construction costs assigned by the Secretary to such refuge lands shall be nonreimbursable and nonreturnable"; and (4) that there be added to the sentence ending on page 4, line 4, the expression ", but this repeal shall not affect the application of net revenues received prior to January 1, 1943, for which provision was made in the second sentence thereof."

Since I am informed that there is a particular urgency for the submission of the views of this Department on H. R. 11409, this report has not been cleared through the Bureau of the Budget and, therefore, no commitment can be made concerning the relationship of the views herein expressed to the program of the President.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

COMMENTS OF THE BUREAU OF THE BUDGET

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C, July 11, 1956.

Hon. CLAIR ENGLE,
Chairman, House Committee on Interior and Insular Affairs,
House of Representatives, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: This is in reply to your letter of May 24, 1956, requesting the views of the Bureau of the Budget on H. R. 11409, a bill to authorize the Secretary of the Interior to execute a contract with the Tule Lake Irrigation District, California, and for other purposes.

H. R. 11409, if enacted, would authorize the Secretary of the Interior to execute a repayment contract with the Tule Lake Irrigation District, California, substantially as approved at an election of the district held on May 29, 1956.

The Department of the Interior, in a report which has been transmitted to your committee, recommends enactment of H. R. 11409

with several amendments. We understand that the Department's recommendations have been substantially incorporated in a new bill H. R. 12304 introduced by you on June 28, 1956.

It is believed that a strong case can be made for the homesteaders repaying a greater proportion of the construction costs. However, the approach proposed by the Department of the Interior is the product of extensive negotiations with representatives of the Tule Lake Irrigation District. Under the circumstances, the Bureau of the Budget agrees with the proposed report of the Department of the Interior and would have no objection to the enactment of H. R. 11409 if amended as recommended by the Department.

Sincerely yours,

ROBERT E. MERRIAM,
Assistant to the Director.

CHANGE IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill H. R. 12034, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PROVISO ATTACHED TO THE ITEM IN THE INTERIOR DEPARTMENT APPROPRIATION ACT, 1941, APPROPRIATING FUNDS FOR CONSTRUCTION OF THE KLAMATH PROJECT (54 STAT. 406, 436)

Klamath project, Oregon-California, $200,000 [: *Provided*, That expenditures from this appropriation and from any other appropriation for the construction of the Modoc Unit shall be reimbursed from net revenues hereafter received from the lease of grazing and farming lands within the Tule Lake Division, notwithstanding the provisions of subsection I of section 4 of the Act of December 5, 1924 (43 Stat. 703; 43 U. S. C. 373a)];

* * * * * * *

ACT OF JUNE 17, 1944 (58 STAT. 279; 43 U. S. C., SEC. 612)

That the contract dated April 28, 1943, negotiated by the Secretary of the Interior with the Klamath Drainage District and reported on as provided in subsections (a) and (c) of section 7 of the Reclamation Project Act of 1939 (53 Stat. 1187), is approved and the Secretary is hereby authorized to execute it on behalf of the United States.

SEC. 2. In aid of the administration of this contract and for other purposes—

(a) The Act of May 27, 1920 (ch. 209, 41 Stat. 627), is hereby repealed.

(b) Lands owned by the United States, ceded by the States of California and Oregon pursuant to the Act of February 3, 1905 (Cal. Stat. 1905, p. 4), and of January 20, 1905 (L. Oreg. 1905, ch. 5, p. 63), lying in Klamath County, Oregon, west of range 11 east, Willamette meridian, and in Siskiyou County, California, west of range 4 east, Mount Diablo meridian, shall be subject to all applicable provisions of the Federal reclamation laws concerning entry

and patent, except that any part of these lands administered by the Fish and Wildlife Service pursuant to the existing agreement with the Bureau of Reclamation, as this maybe amended from time to time with the approval of the Secretary, shall not be opened to entry.

(c) Net revenues heretofore and hereafter received from lands owned by the United States within the district boundaries shall be covered into the reclamation fund and shall be applied: First, to offset the balance of $47,627.89 as to which the district's obligation is to be released under the proposed contract; second, to offset the balance of the charges heretofore apportioned to the Government-owned lands in Klamath County, Oregon, pursuant to the Act of May 27, 1920, supra, amounting to $36,714.37; third, to offset the balance of charges allocated as of December 31, 1942, to the Lower Klamath Lake Division; and, fourth, as an increment to the reclamation fund without further application to project construction costs.

[(d) The lands in Siskiyou County, California, west of range 4 east, Mount Diablo meridian, and in the vicinity of Lower Klamath Lake, including the lands heretofore uncovered by the changing level of that lake, shall be deemed to be from and after December 31, 1942, part of the Modoc unit of the Tule Lake Division of the Klamath project. Net revenues which have accrued from Government-owned lands under the primary jurisdiction of the Bureau of Reclamation in that area prior to January 1, 1943, shall be applied to offset the balance of the charges allocated to the Lower Klamath Lake Division. Net revenues accruing from and after December 31, 1942, from such Government-owned lands shall be covered into the reclamation fund and applied: First, to offset the costs heretofore or hereafter incurred in connection with the completion of the Modoc unit; and, second, as an increment to the reclamation fund without further application to project construction costs.]

SEC. 3. This Act is declared to be a part of the Federal reclamation laws as these are defined in the Reclamation Project Act of 1939.

(Committee note: Section 2 (e) of H. R. 12034 provides that section 2, subsection (d), of the act of June 17, 1944, is repealed, but that the repeal shall not affect the application of net revenues received prior to January 1, 1943, which was made by the second sentence thereof).

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Calendar No. 2623

84TH CONGRESS, 2d Session } SENATE { REPORT No. 2583

REGULATION OF BANK MERGERS

JULY 16, 1956.—Ordered to be printed

Mr. FULBRIGHT, from the Committee on Banking and Currency, submitted the following

REPORT
TOGETHER WITH INDIVIDUAL VIEWS

[To accompany S. 3911]

The Committee on Banking and Currency, to whom was referred the bill (S. 3911) to amend the Federal Deposit Insurance Act to provide safeguards against mergers and consolidations of banks which might lessen competition unduly or tend unduly to create a monopoly in the field of banking, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The bill is designed to safeguard competition in the banking field by requiring the Federal banking supervisory authorities to consider competitive and monopolistic factors as well as banking factors in approving mergers or consolidations of institutions under their jurisdiction. The bill would amend section 18 (c) of the Federal Deposit Insurance Act to require all asset acquisitions by insured banks through mergers, consolidations, or assumption of liabilities to receive the prior written consent of (1) the Comptroller of the Currency, if the acquiring or resulting bank is a national bank or a district bank; (2) the Board of Governors of the Federal Reserve System, if the acquiring or resulting bank is a State member bank; and (3) the Federal Deposit Insurance Corporation, if the acquiring or resulting bank is a nonmember insured State bank.

In granting or withholding consent to such transactions, the three Federal agencies would be required to consider the financial history and condition of the bank, the adequacy of its capital structure, its future-earnings prospects, the general character of its management, and the convenience and needs of the community to be served by the bank. In addition to these banking factors, the bill requires each

agency to consider whether the effect of the acquisition would be to lessen competition unduly or tend unduly to create a monopoly. In the interest of achieving uniform standards, the banking agency having jurisdiction would be required to consult with the other two supervisory agencies on the competitive and monopolistic aspects of each acquisition. The banking supervisory agencies would also be permitted, but not required, to request the opinion of the Attorney General.

PRESENT LAWS CONCERNING BANK MERGERS

Sherman Antitrust Act

Section 1 of the Sherman Antitrust Act (15 U. S. C. 1, July 2, 1890) prohibits any contract, combination, or conspiracy in restraint of trade or commerce. Section 2 of the act makes it illegal to monopolize, or to combine, conspire or attempt to monopolize any part of trade or commerce. These prohibitions apply to bank mergers and consolidations by either stock or asset acquisition. As Assistant Attorney General Barnes stated—

> In the more than 60 years since the Sherman Act's passage no one has suggested its provisions do not apply to banks as to all other sectors of American business (Senate hearings, p. 64).

The Attorney General is responsible for enforcement of the act, but as far as the committee could ascertain, no proceedings have ever been instituted against a bank merger or consolidation pursuant to its provisions.

Clayton Act

Section 7 of the Clayton Act (15 U. S. C. 18, Oct. 15, 1914) prohibits any corporation (including banks) from acquiring the stock of another where the effect may be substantially to lessen competition or to tend to create a monopoly in any line of commerce. Thus, the Clayton Act goes a step further than the Sherman Antitrust Act and is intended to stop undue concentrations of economic power and monopolies in their incipiency. Furthermore, the Clayton Act standard is easier to prove as it requires a finding only of a reasonable probability of a substantial lessening of competition or tendency toward a monopoly, while the Serman Act requires a finding of actual lessening of competition.

Section 11 of the Clayton Act vests responsibility for enforcing the prohibition against stock acquisitions by banks concurrently in the Federal Reserve Board and the Justice Department. No proceedings have been instituted under section 7 against banks in the more than 40 years this law has been on the books, for reasons which will appear later. The only suit that has been brought under section 7 relating to the banking community was against a bank holding company, and that case was decided in favor of the holding company (*Transamerica Corporation* v. *Board of Governors*, 206 F. 2d 163 (3rd Cir. 1953), cert. denied 346 U. S. 901 (1953)).

Section 7 was amended in 1950 to prohibit mergers by corporations subject to the jurisdiction of the Federal Trade Commission through the acquisition of the assets of other corporations where the effect may be substantially to lessen competition or to tend to create a monopoly. The asset acquisition prohibition was not extended to banking corporations or to other regulated industries under the jurisdiction of the

Interstate Commerce Commission, the Federal Communications Commission, or the Civil Aeronautics Board.

National Bank Act

The National Bank Act (12 U. S. C. 33, Nov. 7, 1918) requires the advance approval of the Comptroller of the Currency before two or more national banks may consolidate, or before a State bank may consolidate with a national bank under the charter of the national bank, or before a national or State bank may merge into a national bank. The act sets forth no specific standards for the Comptroller to apply to such transactions.

Federal Deposit Insurance Act

Section 18 (c) of the Federal Deposit Insurance Act (18 U. S. C. 1828 (c), September 21, 1950) requires the advance approval of the Federal Deposit Insurance Corporation before an insured bank may (*a*) merge or consolidate with any noninsured bank, or (*b*) assume liability to pay any deposits in a noninsured bank, or (*c*) transfer assets to a noninsured bank in consideration of the assumption of liabilities for any portion of the deposits in the insured bank. Section 18 (c) provides further that no insured bank may merge or consolidate with an insured State bank or assume liability to pay any deposits made in another insured bank, if the aggregate capital stock or aggregate surplus of all the banks participating in the transaction is decreased by reason of the transaction, unless prior written consent is given by (*a*) the Comptroller of the Currency if the assuming bank is to be a national bank or a district bank; (*b*) the Federal Reserve Board if the assuming or resulting bank is to be a State member bank; or (*c*) the Federal Deposit Insurance Corporation if the assuming or resulting bank is to be a nonmember insured State bank. No specific standards are set forth in the statute applicable to such transactions.

Bank Holding Company Act of 1956

Section 4 (a) of the Bank Holding Company Act of 1956 (Public Law 511, 84th Cong.) requires the prior approval of the Federal Reserve Board for (1) a company to become a bank holding company by acquiring 25 percent of the voting shares of 2 or more banks; (2) a bank holding company to acquire ownership or control of more than 5 percent of the voting shares of a bank; (3) a bank holding company to acquire all or substantially all of the assets of a bank; or (4) any bank holding company to merge or consolidate with another bank holding company.

Section 4 (c) of the act sets forth the factors the Board must consider to determine whether or not to approve any acquisition, merger, or consolidation. These factors are (1) the financial history and condition of the company or companies and the banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs and welfare of the communities and the area concerned; and (5) whether or not the effect of such acquisition or merger or consolidation would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

In addition, section 4 (d) of the act absolutely prohibits a bank holding company from acquiring the voting shares or assets of a bank

located outside the home State of the holding company unless the laws of the State to be entered specifically authorize such acquisitions.

EFFECTIVENESS OF PRESENT BANK MERGER LAWS

In the 6-year period from January 1, 1950, to December 31, 1955, there have been 830 mergers, consolidations, and purchases involving national and State banks in the United States. Theoretically, all of these transactions were subject to scrutiny under sections 1 and 2 of the Sherman Antitrust Act. However, the Sherman Act has never been applied to bank mergers and consolidations.

It is probable that most, if not all, of these transactions were accomplished through asset acquisitions because national banks and State member banks of the Federal Reserve System are prohibited from acquiring stock in other banks (12 U. S. C. 24), and virtually all State banking laws prohibit State chartered banks from acquiring the controlling stock in another bank. Since section 7 of the Clayton Act applies, in the case of banks, only to mergers or consolidations by stock acquisition, the prohibitions of the act are for all practical purposes a nullity insofar as banks are concerned. This conclusion is borne out by the fact that there has never been an action instituted against a bank pursuant to section 7.

As was stated previously, the attempt to enforce the stock acquisition provisions of section 7 against the Transamerica Corp. was unsuccessful. The Bank Holding Company Act by requiring advance approval by the Federal Reserve Board of all acquisitions by bank holding companies eliminates the necessity of resorting to section 7 in such cases. Thus, section 7 of the Clayton Act is actually an insignificant factor in the control of acquisitions by either banks or bank holding companies.

A total of 460 of the mergers and consolidations consummated during the period from January 1, 1950, to December 31, 1955, were subject to the approval of the Comptroller of the Currency. It has been noted above that the National Bank Act does not specify definite standards to be applied by the Comptroller in such transactions.

The remaining 370 mergers in the 1950–55 period were subject to approval by the State banking departments under applicable State laws. In 240 of these mergers the approval of the Federal Reserve Board and the Federal Deposit Insurance Corporation was also required under the provisions of section 18 (c) of the Federal Deposit Insurance Act. Section 18 (c) does not specify the standards to be applied.

EXPLANATION OF S. 3911

Regulatory agencies

The committee is convinced that there is need for uniform regulation of bank mergers, consolidations, and other asset-acquisition transactions involving banks insured by the Federal Deposit Insurance Corporation. The proposed legislation would achieve effective and uniform regulation by placing the administration of this law in the hands of the Federal banking supervisory agencies. This bill follows the traditional structure of statutes enacted by the Congress in the regulation of other aspects of the banking industry.

The bill amends section 18 (c) of the Federal Deposit Insurance Act by deleting the present authority requiring the advance approval of the three Federal supervisory agencies in mergers, consolidations,

and assumption transactions only where there is a diminution of capital and substituting a new set of standards. Every insured bank would be required to receive advance approval before it could acquire the assets of another bank by merger, consolidation, or absorption through the purchase of assets and the concurrent assumption of deposit liabilities. The advance approval feature is important in halting bank acquisitions before they are consummated and in preserving the depositors' confidence in an institution which might otherwise be destroyed by an attempt to unscramble assets after an acquisition has been completed.

The authority to grant consent to bank acquisitions would be divided along traditional lines between the three Federal banking agencies. Thus, prior written consent would be required from the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a district bank; the Federal Reserve Board if the acquiring, assuming, or resulting bank is to be a State member bank of the Federal Reserve System; or the Federal Deposit Insurance Corporation if the acquiring, assuming, or resulting bank is a State bank that is not a member of the Federal Reserve System but is insured by the FDIC. Consequently, the responsibility for carrying out the statute would be vested in the Comptroller for the 4,700 national banks, in the Board for the 1,851 State member banks, and in the FDIC for the 6,907 nonmember insured State banks.

Criteria to be applied

The bill would require that these three Federal agencies consider the banking factors enumerated in section 6 of the Federal Deposit Insurance Act. These factors cover the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of the act. This requirement should insure that due weight is given to the banking aspects of each asset acquisition.

The three Federal agencies also would be required to consider carefully whether the effect of each asset acquisition may be to lessen competition unduly or tend unduly to create a monopoly. In the interest of achieving uniform standards, the agency having jurisdiction in a particular case must seek the views of each of the other two agencies on the competitive and monopolistic aspects of the transaction. In addition, the agencies would be permitted to request the opinion of the Attorney General on any competitive or monopolistic question. Furthermore, the Attorney General would retain his authority under sections 1 and 2 of the Sherman Act to institute proceedings in any bank merger or consolidation.

New competitive test

The committee adopted a new competitive standard to be applied to bank mergers and consolidations. The test is whether the effect of an acquisition may be "to lessen competition unduly or tend unduly to create a monopoly." The use of the word "unduly" is intended to provide a more flexible test of the degree to which competition may not be impaired than the word "substantially," as used in section 7 of the Clayton Act, has been interpreted by the courts.

The new standard would permit acquisitions when this is the best means of dealing with situations such as:

(1) where the acquired bank's future prospects are unfavorable because of inadequate management or lack of provision for management succession;

(2) where the acquired bank has inadequate capital or unsound assets;

(3) where the acquired bank is an uneconomic unit or is too small to meet the needs of the community by providing loans of sufficient size or necessary banking facilities;

(4) where there is a reasonable probability of the ultimate failure of the bank to be acquired; or

(5) where several banks in a small community are compelled by an "overbanked" situation to resort to unsound competitive practices which may eventually have an adverse effect upon the condition of such banks.

The purpose of the committee in adopting the criterion of lessening competition "unduly," instead of "substantially" as would be the case under the Clayton Act, is to permit the Federal banking regulatory agencies to deal with situations such as these and others peculiar to banks. In the absence of such exceptional circumstances, the committee would expect these agencies to apply the new standard rigorously to preserve competition in the banking field.

The "failing corporation" exemption as set forth by the United States Supreme Court in the case of *International Shoe Company* v. *the Federal Trade Commission* (280 U. S. 291) does not adequately cover the situations that may arise. The Court there stated that where the corporation acquired is—

> a corporation with resources so depleted and the prospect of rehabilitation so remote that it faced the grave probability of business failure * * * we hold that the purchase of its capital stock by a competitor (there being no other prospective purchaser), not with a purpose to lessen competition, but to facilitate the accumulated business of the purchaser and with the effect of mitigating serious injurious consequences otherwise probable * * * does not substantially lessen competition or restrain commerce within the intent of the Clayton Act.

This interpretation is too narrow in that mergers might well be desirable before a bank reaches the situation described by the Court. A bank in the condition described would probably have already been taken over by the Federal Deposit Insurance Corporation and arrangements made to protect the depositors' accounts. Furthermore, the committee believes it is better legislative practice to express the intent clearly in the law rather than to rely on interpretations by the courts.

State bank supervisors

The bill is not intended to deprive the State bank supervisors of any of their present authority over bank mergers and consolidations within their respective States. The views of the State supervisory authorities will be given careful consideration by the Federal agencies in any transaction involving a State chartered bank. The committee endorses the statement made by the First Deputy Comptroller of the Currency, Mr. L. A. Jennings, that—

> It is not believed that enactment of S. 3911 will result in any substantial lessening of the authority of the State supervisors within their States. The Federal Reserve System in its supervision of State member banks, and the Federal Deposit Insurance Corporation in its supervision of State insured banks, now work very closely with the State banking departments. It is certain that they will continue to do so and that views and recommendations of State supervisory authorities will be given full and careful consideration by those two agencies (Senate hearings, p. 16).

It should be noted also that the noninsured State commercial and mutual savings banks would not be covered by this legislation unless one were to be acquired in a merger or absorption by a National bank, or a State member bank of the Federal Reserve System, or a State nonmember bank insured by the Federal Deposit Insurance Corporation. If two noninsured State banks were to merge or consolidate, the provisions of this bill would not be applicable and the transaction would be subject solely to the approval of the State bank supervisors. There are only 499 noninsured commercial banks located in 39 States and the entire group has less than 1½ percent of the commercial banking resources of the country. The merger of any two or several of these banks would have little, if any, effect on the maintenance of adequate banking competition. The 308 noninsured mutual savings banks are in a similar position. The past history of their operations and their mutual character mitigate against the dangers of any lessening of competition or tendency to create a monopoly.

CONCLUSION

The committee was impressed by the unequivocal endorsement of S. 3911 by the Treasury Department, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. The Bureau of the Budget stated that "* * * the enactment of legislation for this purpose would be in accord with the program of the President." The bill also has the full support of the Federal Advisory Council, the American Bankers Association, and many individual bankers throughout the country.

The need for a uniform system of Federal regulation of bank mergers and consolidations is evident. S. 3911 will meet the need and provide adequate safeguards to preserve competition. The committee strongly recommends this legislation and urges its adoption by the Senate.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 18 (c) OF THE FEDERAL DEPOSIT INSURANCE ACT

SEC. 18. (c) Without prior written consent by the Corporation, no no insured bank shall (1) merge or consolidate with any noninsured bank or institution or convert into a noninsured bank or institution

or (2) assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution or (3) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured bank. No insured bank shall convert into an insured State bank if its capital stock, or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholders' meeting approving such conversion, without prior written consent by the Comptroller of the Currency if the resulting bank is to be a District bank, or by the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank), or by the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank). [No insured bank shall (i) merge or consolidate with an insured State bank under the charter of a State bank or (ii) assume liability to pay any deposits made in another insured bank, if the capital stock or surplus of the resulting or assuming bank will be less than the aggregate capital stock or aggregate surplus, respectively, of all the merging or consolidating banks or of all the parties to the assumption of liabilities, at the time of the shareholders' meetings which authorized the merger or consolidation or at the time of the assumption of liabilities, unless the Comptroller of the Currency shall give prior written consent if the assuming bank is to be a national bank or the assuming or resulting bank is to be a District bank; or unless the Board of Governors of the Federal Reserve System gives prior written consent if the assuming or resulting bank is to be a State member bank (except a District bank); or unless the Corporation gives prior written consent if the assuming or resulting bank is to be a nonmember insured bank (except a District bank).] *No insured bank shall merge or consolidate with any other insured bank or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured bank without the prior written consent (i) of the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank, or (ii) of the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank), or (iii) of the Corporation if the acquiring, assuming, or resulting bank is to be a nonmember insured bank (except a District bank). In granting or withholding consent under this subsection, the Comptroller, the Board or the Corporation, as the case may be, shall consider the factors enumerated in section 6 of this Act. In the case of a merger, consolidation, acquisition of assets or assumption of liabilities, the appropriate agency shall also take into consideration whether the effect thereof may be to lessen competition unduly or to tend unduly to create a monopoly, and, in the interests of uniform standards, it shall not take action as to any such transaction without first seeking the views of each of the other two banking agencies referred to herein with respect to such question; and in such a case the appropriate agency may also request the opinion of the Attorney General with respect to such question.* No insured State nonmember bank (except a District bank) shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

INDIVIDUAL VIEWS OF MR. DOUGLAS AND MR. LEHMAN

We believe that the survival of our Nation's independent banking system depends upon the enactment of legislation to halt the current trend of bank mergers and consolidations. For that reason, we joined with the majority of the committee in ordering S. 3911 reported to the Senate in order to get the measure up for a vote. However, we consider the committee bill grossly inadequate and specifically reserved the right to offer amendments on the Senate floor to strengthen the bill and make it effective.

The provisions of the committee bill are discussed in the majority report. The basic differences between this measure and the Celler bill (H. R. 9424) which has passed the House of Representatives, are found in the provisions for administration of the legislation and the legislative standards for preserving competition. The committee bill amends certain banking statutes, provides for the administration of the legislation by the Federal banking agencies and prohibits competition from being impaired "unduly." The Celler bill would amend the Clayton Antitrust Act, give concurrent administrative jurisdiction to the Department of Justice and the Federal Reserve Board, and rely on the Clayton Act test prohibiting the lessening of competition "substantially."

The committee bill falls short of the legislative need in two major respects. First, it provides the competitive test of lessening competition "unduly" rather than the traditional Clayton Act standard of "substantially" lessening competition. Secondly, it gives the three Federal banking agencies sole administrative authority over bank mergers, bypassing the Department of Justice entirely. We intend to propose to the Senate that the Clayton Act test, with solvency safeguards, be applied to all mergers involving insured banks and that the approval of the Attorney General be required before a bank merger may be consummated.

We support the provision of the bill requiring the three Federal banking agencies to pass on bank mergers within their respective spheres of operation. Thus, prior consent would be necessary from the Comptroller of the Currency if the continuing bank is a national bank, the Federal Reserve Board if the continuing bank is a State member bank, and the Federal Deposit Insurance Corporation if the continuing bank is a nonmember insured State bank. Similarly, we do not propose to amend the present provision of the bill requiring the three banking agencies to consider the banking factors of each merger as set forth in section 6 of the Federal Deposit Insurance Act. It is entirely proper that these agencies should initially process the mergers of banks, which are already within their respective examining jurisdictions, and examine the banking aspects of each transaction.

But granting authority to the three Federal banking agencies to approve or disapprove mergers, without the concurrence of the

Department of Justice, is not enough to assure that competitive factors will be given sufficient weight. The main purpose of the examining functions of the banking agencies is to assure the financial health of the banks for the protection of depositors. Obviously, if a bank has less competition, it can more easily keep itself financially healthy, but this may be done at the expense of the public which depends on competition to keep charges low and progress in process.

We do not necessarily level any charges of bad faith or promonopoly philosophy to the Federal banking agencies, because their main concern is to protect depositors, but it is a fact that they have apparently worried very little about the increasing number of bank mergers. Only after the House passed the Celler bill covering bank mergers by asset acquisition under the Clayton Antitrust Act, did they finally come up with a bill, themselves. Their bill is the one reported by the committee.

Aside from a lack of leadership toward stemming the recent tide of bank acquisitions, these agencies have a record of disapproving mergers under the present laws which could hardly be called vigorous. Since 1950, for example, the Comptroller of the Currency had approved some 460 mergers. Disapprovals were made as follows:

Year	Number of formal disapprovals	Number of informal disapprovals
1950	0	0
1951	0	0
1952	0	1
1953	0	0
1954	1	3
1955	8	9
Total	9	13
	22	

Thus, with only 9 formal disapprovals, and 13 informal disapprovals, the Comptroller has approved between 96 and 98 percent of all mergers during the past 6 years.

The Federal banking agencies plead that they had insufficient legislative criteria upon which to base disapproval of mergers. But their bill, and their testimony in favor of it, shows only too clearly that they consider the need for competition a mere headache—they have no feeling or belief in its need.

The bill recommended by the agencies and reported by the committee throws out the standard Clayton Act test of "substantially" lessening competition, and substitutes the word "unduly." The agencies make no bones about the intent of the new world. It is meant to be a softer test. Mr. H. Earl Cook, Chairman of the FDIC, stated during our hearings.

> We believe that it is essential to the administration of the responsibilities given to the Corporation under the provisions of the Federal Deposit Insurance Act to protect the public as depositors in insured banks that the Corporation be free to act in transactions which are in public interest, notwithstanding the fact that there is a substantial lessening of competition that does not reach the stage of lessening competition

> unduly. In my opinion, the Corporation would be fettered in the discharge of its responsibilities to safeguard the interests of depositors in insured banks if the Clayton Act terminology were applicable to all bank merger, consolidation, and assumption transactions. Again I emphasize the paramount issue should be public interest and public welfare, and not competition and monopoly alone (hearings, p. 48).

Use of the word "unduly" could bring about a whole new series of court cases to determine its judicial interpretation. And, in the final analysis, in view of the agencies statements about its intent, the courts may very well decide that the word "unduly" is a relative term, outside the bounds of legal definition, and gives limitless discretion to the banking agencies which have demonstrated their lack of zeal for competition.

Our proposed amendments would require the banking agencies to consult with the Attorney General on the competitive and monopolistic aspects of each bank merger. The present provisions of the bill give the banking agencies discretionary authority to consult with the Attorney General. We agree with the testimony of the Department of Justice that the agencies should consult the Attorney General in every instance so that the enforcement of the statute shall be uniform and in line with the enforcement of the other antitrust laws.

During committee consideration of this legislation; we favored an amendment under which, the Attorney General could not give consent to a merger if he found that the effect of the transaction would be to lessen competition substantially. It is important to have the objective opinion of the Attorney General because his office is thoroughly familiar and concerned with the competitive and monopolistic problems of our country. The Federal banking agencies tend to be more concerned with the financial condition and soundness of banks than their competitive position.

When our amendments were presented to the committee for consideration, objection was raised on the ground that the Attorney General would only examine the question of whether there was a substantial lessening of competition and not take cognizance of other important factors involving financial solvency of a bank and the protection of depositors' accounts. We pointed out that the United States Supreme Court in the *International Shoe Company* case (280 U. S. 291) had held that under certain conditions the merger of a failing corporation would not violate the intent of the Clayton Act. The majority of the committee believed that this interpretation was too narrow to adequately cover situations where a bank was in financial difficulties.

In an attempt to put to rest any fears that the Clayton Act test might prevent mergers of banks which might otherwise fail, we have modified our amendment to permit the Attorney General to grant consent to a merger even though there may be a substantial lessening of competition if he finds that the merger is necessary to prevent the "probable failure" of one of the banks involved in the transaction. This modification should provide ample protection to the depositors and the community concerned where a bank is likely to be in a failing condition.

The amendments to S. 3911 which we intend to propose are as follows:

On page 2, lines 14 and 15, strike out the words "to lessen competition unduly or to tend unduly" and insert in lieu thereof "substantially to lessen competition or to tend".

On page 2, line 20, strike out the word "may" and insert in lieu thereof "shall".

On page 2, line 21, add the following sentence after the period at the end thereof:

> If the Attorney General finds that the effect of the proposed transaction may be substantially to lessen competition or to tend to create a monopoly, consent shall not be given under this subsection unless the Attorney General finds further that such a transaction is necessary to prevent the probable failure of one of the banks concerned.

Amend the title so as to read:

> A bill to amend the Federal Deposit Insurance Act to provide safeguards against mergers and consolidations of banks where the effect may be substantially to lessen competition or tend to create a monopoly in the field of banking.

PAUL H. DOUGLAS.
HERBERT H. LEHMAN.

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Calendar No. 2625

84TH CONGRESS, 2d Session | SENATE | REPORT No. 2584

RELATING TO THE MANAGEMENT OF THE RED LAKE INDIAN FOREST AND SAWMILL

JULY 16, 1956.—Ordered to be printed

Mr. O'MAHONEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 3787]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 3787) relating to the management of the Red Lake Indian Forest and sawmill, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

On page 2, line 14, after the word "employ", insert a comma and the following "with the consent of the tribal council,".

PURPOSE OF THE BILL

The purpose of S. 3787 is to amend the act of May 18, 1916 (39 Stat. 123, 137), to authorize the Red Lake Indian Forest to be administered in a manner that will give full effect to the principles of scientific forestry by permitting the sale and manufacture of such merchantable timber as may be deemed advisable in order to encourage the production of successive timber crops.

EXPLANATION OF THE BILL

The act of May 18, 1916, established a portion of the forested lands of the Red Lake Indian Reservation in Minnesota as the Red Lake Indian Forest. Under that act, the Secretary of the Interior was directed to administer the forest in accordance with sustained-yield forestry practices, and authorized him—

> to sell and manufacture only such standing and growing pine and oak timber as is mature and has ceased to grow, and to sell and manufacture from time to time such other mature and marketable timber as he may deem advisable.

The restrictions in the 1916 act on the type of timber that may be harvested are in conflict with present-day principles of scientific forestry. Many of the trees in the forest are partially defective, suppressed, subject to windthrow, or for other reasons are not desirable as components of the reserve stand. A large amount of merchantable timber in the forest has not reached maturity, but it should be removed in order to comply with good silvicultural practices.

While the 1916 act authorizes the construction and operation of sawmills to manufacture lumber from the timber on the Red Lake Indian Forest, there is no authority to purchase timber from other sources. There are only about 20 million board-feet of timber on the reservation available for harvesting. At the present cutting rate of 5 million board-feet of sawlogs annually, it will be necessary to shut down the tribal sawmill within a few years unless an augmented supply of non-Indian timber is made available. Therefore, S. 3787 authorizes the purchase of additional timber from off-reservation sources to contribute to the profitable operation of the sawmill as a tribal enterprise. It would also make clear that the merchantable timber from all tribal forest lands on the Red Lake Reservation, and not merely the timber from the area specifically designated as the Red Lake Indian Forest by the 1916 act, may be utilized in the conduct of the sawmill operation.

The 1916 act, as supplemented, does not authorize the construction and operation of any wood-using facilities except sawmills, planing mills, and box factories. Although there are no plans at present for expanding the enterprise, S. 3787 authorizes the construction and operation of additional facilities such as a veneer plant or simple furniture factory in the event their operation should become feasible.

It is the understanding of the committee that the payment for additional services provided in this bill shall be made from tribal funds or proceeds from the operation of the tribal enterprises.

The purpose of this act is to encourage the Indians to use their own resources and to develop their skills. It will help to place the tribal sawmill operation on a sound footing, and provide the Red Lake Indians with a sound economic base that will hasten the time when Federal trust responsibilities can be terminated.

The executive communication of the Department of the Interior, dated April 24, 1956, recommending this legislation, is set forth below:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., April 25, 1956.

Hon. RICHARD M. NIXON,
President of the Senate, Washington 25, D. C.

MY DEAR MR. PRESIDENT: Enclosed herewith is a draft of a proposed bill relating to the management of the Red Lake Indian Forest and sawmill.

We recommend that the proposed bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The Appropriation Act of May 18, 1916 (39 Stat. 123, 137) designated a portion of the forested lands of the Red Lake Indian Reservation in Minnesota as the Red Lake Indian Forest. The act directed the Secretary of the Interior to administer the forest in accordance with principles of scientific forestry, with a view to the production of successive timber crops thereon, and authorized him "to sell and

manufacture only such standing and growing pine and oak timber as is mature and has ceased to grow, and * * * to sell and manufacture from time to time such other mature and marketable timber as he may deem advisable."

The restrictions in the act on the type of timber that may be harvested are not in harmony with present conditions in the wood-using industries, and are actually in conflict with the part of the same act that calls for the management of the forest in accordance with principles of scientific forestry. There are considerable volumes of timber within the forest that have not reached physiological maturity, but which should be removed in order to comply with good silvicultural practices. Much of this material is marketable. It includes posts, poles, and other material to be removed as a thinning operation from the dense stands of reproduction; and trees of sawlog size that are partially defective, suppressed, subject to windthrow, or for other reasons are undesirable components of the reserve stand. The proposed legislation would remedy this situation by authorizing the Red Lake Indian Forest to be administered in a manner that will give full effect to the principles of scientific forestry by permitting the sale and manufacture of such merchantable timber as may be deemed advisable in order to encourage the production of successive timber crops.

The 1916 act authorizes the construction and operation of sawmills to manufacture into lumber the timber harvested from the Red Lake Indian Forest, but it does not authorize the purchase of timber from other sources. The volume of sawlog material remaining on the reservation that is presently available for cutting on a sustained-yield basis is not sufficient to provide for continuing profitable operation of the tribal sawmill. The mill is currently using about 5 million board-feet of sawlogs annually, which is the minimum volume of business that will provide a reasonable employment base for the members of the tribe who are dependent upon the enterprise for their livelihood. There are only about 20 million board-feet of timber on the reservation that is both ready for harvesting and accessible to the tribal sawmill. If the mill remains dependent upon this supply alone, it will be forced to shut down within a very few years. If the supply can be augmented by purchases of non-Indian timber, the life span of the enterprise can be correspondingly extended. The proposed legislation therefore authorizes the purchase of such additional timber standing on or severed from lands outside the reservation as may contribute to the profitable operation of the sawmill as a tribal enterprise. In addition, it would make clear that the merchantable timber from all tribal forest lands on the Red Lake Reservation, and not merely the timber from the area specifically designated as the Red Lake Indian Forest by the 1916 act, may be utilized in the conduct of the sawmill operation.

The 1916 act, as supplemented, does not authorize the construction and operation of any wood-using facilities except sawmills, planing mills, and box factories. Although there are no plans at present for expanding the enterprise, we believe that the authority for constructing and operating additional facilities such as a veneer plant or simple furniture factory should be available in the event their operation should become feasible. The proposed legislation, therefore, authorizes the construction and operation of sawmills and other facilities for the manufacture of the timber into marketable products.

The enactment of the proposed legislation will help to place the sawmill enterprise on a sound footing, and will provide the Red Lake Indians with a sound economic base that will hasten the time when Federal trust responsibilities can be terminated. As an incident to this major objective, it will clarify and simplify the laws governing the sawmill enterprise.

The Bureau of the Budget has advised that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

WESLEY A. D'EWART,
Assistant Secretary of the Interior.

A BILL Relating of the management of the Red Lake Indian Forest and Sawmill,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the seventeenth paragraph of section 9 of the Act of May 18, 1916 (39 Stat. 123, 137) is hereby amended to read as follows:

"The Red Lake Indian Forest shall be administered by the Secretary of the Interior in accordance with principles of scientific forestry that will encourage the production of successive timber crops for the benefit of the Indians of the Red Lake Band, and he is hereby authorized (a) to harvest, sell, and manufacture such marketable timber from any tribal lands within the Red Lake Indian Reservation as he may deem to be advisable and, if the timber is the growth of Red Lake Indian Forest, in keeping with the foregoing principles, (b) to establish nurseries and otherwise provide for the reforestation of said lands, (c) to construct and operate sawmills and other facilities for the manufacture into marketable products of the timber harvested from said lands, (d) to purchase, harvest, and manufacture such additional timber standing on or severed from any other lands, including lands outside the reservation, as in his opinion may contribute to the profitable operation of such sawmills and other facilities as a tribal enterprise, subject to such limitations on expenditures as may be prescribed in annual appropriations, acts and (e) to employ such persons and use such means as he may find necessary to carry out the purposes of the foregoing provisions. Any proceeds derived from sales of timber or timber products under this paragraph may be expended in payment of the expenses of any of the activities authorized by this paragraph, including construction expenses."

SEC. 2. The fourth paragraph of section 8 of the Act of June 30, 1919 (41 Stat. 3, 14), is hereby amended by striking out the proviso.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill (S. 3787), as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF MAY 18, 1916 (39 STAT. 123, 137)

SEC. 9. * * * [That said forest shall be administered by the Secretary of the Interior in accordance with the principles of scientific forestry, with a view to the production of successive timber crops

thereon, and he is hereby authorized to sell and manufacture only such standing and growing pine and oak timber as is mature and has ceased to grow, and he is also authorized to sell and manufacture from time to time such other mature and marketable timber as he may deem advisable, and he is further authorized to construct and operate sawmills for the manufacture of the timber into merchantable products and to employ such persons as he shall find necessary to carry out the purposes of the foregoing provisions, including the establishment of nurseries and the purchase of seeds, seedlings, and transplants when needed for reforestation purposes: *Provided*, That all timber sold under the provisions herein shall be sold on what is known as the bank scale: *Provided further*, That no contract shall be made for the establishment of any mill, or to carry on any logging or lumbering operations which shall constitute a charge upon the proceeds of the timber, until an estimate of the cost thereof shall have first been submitted to and approved by Congress.]

* * * * * * *

The Red Lake Indian Forest shall be administered by the Secretary of in Interior in accordance with principles of scientific forestry that will encourage the production of successive timber crops for the benefit of the Indians of the Red Lake Band, and he is hereby authorized (a) to harvest, sell, and manufacture such marketable timber from any tribal lands within the Red Lake Indian Reservation as he may deem to be advisable and, if the timber is the growth of Red Lake Indian Forest, in keeping with the foregoing principles, (b) to establish nurseries and otherwise provide for the reforestation of said lands, (c) to construct and operate sawmills and other facilities for the manufacture into marketable products of the timber harvested from said lands, (d) to purchase, harvest, and manufacture such additional timber standing on or severed from any other lands, including lands outside the reservation, as in his opinion may contribute to the profitable operation of such sawmills and other facilities as a tribal enterprise, subject to such limitations on expenditures as may be prescribed in annual appropriations acts, and (e) to employ , with the consent of the tribal council, such persons and use such means as he may find necessary to carry out the purposes of the foregoing provisions. Any proceeds derived from sales of timber or timber products under this paragraph may be expended in payment of the expenses of any of the activities authorized by this paragraph, including construction expenses.

ACT OF JUNE 30, 1919 (41 STAT. 3, 14)

SEC. 8.* * * That not to exceed $10,000 of the funds derived from the sale of timber from the Red Lake Indian Forest, Minnesota, under authority of the Act of May 18, 1916 (Thirty-ninth Statutes at Large, page 137), may be expended by the Secretary of the Interior in payment of the expenses authorized by said Act[: *Provided*, That hereafter all proceeds of sales of timber products manufactured at the Red Lake Agency sawmill, or so much thereof as may be necessary, shall be available for expenses of logging, booming, towing, and manufacturing timber at said mill].

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Calendar No. 2626

84TH CONGRESS, 2d Session | SENATE | REPORT No. 2585

AMENDING THE WATERSHED PROTECTION AND FLOOD PREVENTION ACT

JULY 16, 1956.—Ordered to be printed

Mr. CHAVEZ, from the Committee on Public Works, submitted the following

REPORT

[To accompany H. R. 8750]

The Committee on Public Works, to whom was referred the bill (H. R. 8750) to amend the Watershed Protection and Flood Prevention Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is indicated in the bill as reported by line type and italics.

PURPOSE

The purpose of this bill is to amend the Watershed Protection and Flood Prevention Act, approved August 4, 1954 (Public Law 566), to permit full development of all land and water resources as an integral part of a watershed soil conservation and flood and sediment control program. The bill is designed to permit the inclusion, in reservoirs constructed for flood and sediment detention, of capacity for municipal and industrial water supplies as well as regulatory capacity for irrigation and other beneficial purposes which are consistent with the basic purpose of flood and sediment control. In addition, the bill would authorize the Federal Government to make loans to local organizations to assist them in financing their share of the cost.

GENERAL STATEMENT

Extensive hearings were conducted by the Committee on Public Works, on the matter of amending the Watershed Protection and Flood Prevention Act, with a number of Senate bills as well as H. R. 8750 being considered.

Representatives of many States and organizations testified in favor of enlarging the authority contained in Public Law 566. These witnesses urged that the potential reservoir sites be used fully for all

useful purposes and urged that the review processes be simplified so that the programs could be expedited. They urged that authority for loans be granted and also that the Federal share of the cost of flood-control works be increased over that allowed by existing law.

Testimony was presented to the committee expressing the concern of irrigation water users and others that the extensive construction of waterflow retardation dams might cause great damage to already developed agricultural areas. The concern of these people dealt largely with the matter of permanent storage of water in the retardation reservoirs. Their opinion is that the upstream farmers and ranchers are fully justified in utilizing all of the rainfall that is helpful to them but they voiced objection to the retention of permanent pools which may cause needless evapoaration losses and resultant decrease in the availability of water for downstream users;

Some concern was expressed by other Federal agencies, operating in the field of water control, that an authorization to expand Public Law 566 may cause conflict or overlapping of functions within the Federal agencies, and their testimony was quite helpful to the committee in reaching its decisions.

EXISTING LAW

The Watershed Protection and Flood Prevention Act, Public Law 566, 83d Congress provided authority for the Secretary of Agriculture to assist local organizations in developing and carrying out projects for flood prevention (including structural and land treatment measures) or the agricultural phases of the conservation, development, utilization and disposal of water. This authority includes assistance on soil conservation practices applied by farmers and ranchers and structural measures for flood prevention, irrigation and drainage, such as floodwater detention structures, streambank stabilization, major gully control, diversions, irrigation and drainage canals and related measures. Under Public Law 566, however, the Secretary is prohibited from paying any part of the cost of storage in structures for purposes other than flood prevention and from including in a watershed plan any features for nonagricultural purposes such as municipal water supply or streamflow regulation.

A "local organization" is defined in Public Law 566 as including a State, political subdivisions thereof, soil or water conservation district, flood prevention or control district, or combinations, or any other agency having authority under State law to carry out, maintain and operate the works of improvement. In order to receive assistance a local organization must first submit an application therefor to the responsible State agency designated to supervise this program or to the governor if there is no such program. If the State agency or governor does not disapprove the application within 45 days the local organization may submit it to the Secretary.

The application for assistance must be confined to a watershed or subwatershed area of not more than 250,000 acres, although 2 or more subwatersheds may be planned jointly, if requested, by a local organization.

The Secretary is authorized to conduct needed surveys of the watershed, develop a plan of improvements, determine the economic feasibility of the plan and assist the local organization with financial and

other assistance to carry out the plan. This includes developing specification, preparing contracts for construction, and to assist in supervising construction.

As a condition to receiving Federal financial assistance in carrying out the plan, the local organization must agree (1) to acquire all land easements and rights of way at local cost, (2) acquire or provide all necessary water rights, (3) obtain agreements from at least 50 percent of landowners above retention reservoirs to carry out necessary soil conservation measures, (4) to contract for all structures after July 1, 1956, (5) to operate and maintain all improvements, and (6) to assume such proportionate share of the cost of installing any works of improvement as the Secretary considers to be equitable in consideration of anticipated benefits.

The Secretary is required to submit the watershed plan to the Secretary of the Army if it contains any floodwater detention structures and to the Secretary of the Interior, if it contains any irrigation features or affects any land under his jurisdiction. These Federal agencies are allowed 60 days to submit their comments on the plans to the Secretary. Thereafter, the Secretary must transmit the plan to the Congress through the President. The plans must remain before the Congress 45 days before Federal assistance in installation may be provided. If any plan contains a structure having a capacity of more than 2,500 acre-feet, resolutions of approval by the Committee on Agriculture and Forestry of the Senate and Committee on Agriculture of the House of Representatives must be adopted to authorize the appropriation of funds for use on the project.

PROPOSED AMENDMENTS

The amendments to the Watershed Protection and Flood Prevention Act proposed in this bill would:

1. Broaden the purposes of the act to permit the inclusion in watershed work plans of improvements not only for flood prevention, irrigation and drainage, but also for nonagricultural purposes such as municipal water supply and streamflow regulation.

2. Raise the limit on total capacity of any single structure that may be included in a watershed plan from 5,000 acre-feet to 25,000 acre-feet, but would retain the restriction on flood detention capacity to 5,000 acre-feet.

3. Require the preparation of plans and estimates needed for adequate engineering evaluation.

4. Require an allocation of costs to various purposes.

5. Provide that the Federal Government would bear the entire construction cost for flood prevention.

6. Require local organizations to bear such proportionate share of the cost of improvements for irrigation, drainage and other agricultural water management as may be determined by the Secretary to be equitable in consideration of the direct identifiable benefits.

7. Require local organizations to bear all of the costs of improvements other than flood prevention, irrigation, drainage, and agricultural water management.

8. Place in the local organization the responsibility for securing the necessary engineering services in the design, preparation of specifications, awarding of contracts, and supervision of construction of works of improvement. The local organizations would retain qualified

professional engineers satisfactory to the Secretary of Agriculture and advances of funds for such services would be made by the Secretary. If the local organization cannot obtain such services then the Secretary is authorized to contract for such services or to utilize engineers employed by the Federal Government. The advances to the local organization would not exceed 5 percent of the estimated total cost of works.

9. Broaden the safeguarding of State water rights by making the act applicable to "water users" as well as "landowners."

10. Provide for Federal loans or advancements of up to 50 years duration at the Federal long-term borrowing rate, not to exceed $5 million on any one project.

11. Require local organizations to submit a satisfactory plan of repayment of loans or advancements.

12. Exempt projects involving less than $250,000 of Federal contribution to construction costs and containing no structure having more than 2,500 acre-feet capacity from review by other Federal agencies and the Congress.

13. Require all projects submitted to the Congress to be approved by resolution of committees in both the Senate and House as a condition to appropriation of funds to carry out the project. This eliminates the 45-day waiting period presently contained in the act.

14. Extends the provisions of the act to Hawaii, Alaska, Puerto Rico, and the Virgin Islands.

15. Extends the benefits of the amendments made by this act to projects heretofore authorized.

16. Provides that all watershed plans which have received approval of committees under the provisions of the Watershed Protection and Flood Prevention Act, may proceed prior to the expiration of the 45-day period of delay now required.

DISCUSSION

The committee considered the amendments to Public Law 566 very carefully and is of the opinion that authorizing the Department of Agriculture to cooperate in the planning and construction of relatively small dams and reservoirs is desirable. The committee believes that, by limiting the reservoir capacity of any single structure to 25,000 acre-feet and the flood detention capacity to 5,000 acre-feet in an overall watershed program, that there should be a minimum of conflict between Federal agencies. In this connection the committee urges fuller cooperation and coordination in agency activities. The committee is also of the opinion that the water yield of a drainage area of 250,000 acres would rarely justify more than 25,000 acre-feet of water storage or conservation in any single reservoir.

The committee believes that legislation is desirable to allow inclusion of municipal and industrial water storage in all reservoirs, where desired, and where local entities are willing to repay to the United States for that part of the cost allocated to that purpose, with reasonable interest rates, and an appropriate share of the operation and maintenance cost. It is understood that contracts entered into will provide that the reservoirs be operated in a manner consistent with uses for flood and sediment detention.

It is the intention of the committee that the Secretary of Agriculture be authorized to either make loans or to enter into repayment con-

tracts with organizations with powers to enter into repayment contracts under State laws. Some local organizations are limited by constitutional or statutory requirements in negotiating loans but would be in a position to negotiate contracts for the supply of water at stipulated rates over a future period of years.

The committee is fully cognizant of the problem associated with the storage of water in upstream reservoirs and its effect on downstream users. The present law requires as a condition to providing Federal assistance that the local organization shall acquire, or provide assurance that the landowners have acquired, such water rights, pursuant to State law, as may be needed in the installation and operation of the work of improvement. In addition, the committee recommends the inclusion of the word "water users" in the condition for Federal assistance to assure that both landowners and all other water users have complied with State water laws.

The committee is of the opinion that it is desirable to reduce delay in the handling of small projects. Therefore, those projects requiring a Federal contribution of less than $250,000, and reservoirs of less than 2,500 acre-feet of total capacity, need not be submitted to Congress through the President.

The committee believes that those projects which have been approved under the provisions of Public Law 566 should benefit through the provision of this act, and also that those projects which have been cleared by required committee resolution should be allowed to proceed without being subject to the 45-day delay in initiation of construction. The committee understands that the outstanding agreements and contracts with local organizations relating to the projects proposed or underway under the existing act will be modified to conform to the provisions of the act as amended.

It is the understanding of the committee that any significant change in purpose or in scope of plans would require compliance with applicable approval procedures.

The committee is of the opinion that the local organizations should make the fullest practicable use of available and qualified professional engineers and it is believed that where appropriate under the act as amended, the local organizations should be advanced funds to pay for such services. The committee recognizes that the current shortage of engineers, both within and without the Government, make it essential that the local organizations and the Department of Agriculture have latitude to meet the conditions experienced in many States and localities with respect to the availability of engineering services.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

WATERSHED PROTECTION AND FLOOD PREVENTION ACT

* * * * * * *

SEC. 2. For the purposes of this Act, the following terms shall mean:

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The "Secretary"—the Secretary of Agriculture of the United States.

"Works of improvement"—any undertaking for—

(1) flood prevention (including structural and land-treatment measures) or

(2) [agricultural phases of] the conservation, development, utilization, and disposal of water

in watershed or subwatershed areas not exceeding two hundred and fifty thousand acres and not included any single structure which provides more than five thousand acre-feet of *floodwater detention capacity, and more than twenty-five thousand acre-feet of* total capacity. No appropriation shall be made for any plan for works of improvement *the total cost of which is estimated to be in excess of $250,000, or* which includes any structure which provides more than twenty-five hundred acre-feet of total capacity unless such plan has been approved by resolutions adopted by the [Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives, respectively] *Committee on Public Works of the Senate and the Committee on Public Works of the House of Representatives, respectively.* A number of such subwatersheds when they are component parts of a larger watershed may be planned together when the local sponsoring organizations so desire.

"Local organization"—any State, political subdivision thereof, soil or water conservation district, flood prevention or control district, or combinations thereof, or any other agency having authority under State law to carry out, maintain and operate the works of improvement.

SEC. 3. In order to assist local organizations in preparing and carrying out plans for works of improvement, the Secretary is authorized, upon application of local organizations if such application has been submitted to, and not disapproved within 45 days by, the State agency having supervisory responsibility over programs provided for in this Act, or by the Governor if there is no State agency having such responsibility—

(1) to conduct such investigations and surveys as may be necessary to prepare plans for works of improvement;

[(2) to make such studies as may be necessary for determining the physical and economic soundness of plans for works of improvement, including a determination as to whether benefits exceed costs;]

(2) to prepare plans and estimates required for adequate engineering evaluation;

(3) to make allocations of costs to the various purposes to show the basis of such allocations and to determine whether benefits exceed costs;

[(3)] *(4)* to cooperate and enter into agreements with and to furnish financial and other assistance to local organizations: *Provided,* That, for the land-treatment measures, the Federal assistance shall not exceed the rate of assistance for similar practices under existing national programs;

[(4)] *(5)* to obtain the cooperation and assistance of other Federal agencies in carrying out the purposes of this section.

SEC. 4. The Secretary shall require as a condition to providing Federal assistance for the installation of works of improvement that local organizations shall—

(1) acquire without cost to the Federal Government such land, easements, or rights-of-way as will be needed in connection with works of improvement installed with Federal assistance;

[(2) assume such proportionate share of the cost of installing any works of improvement involving Federal assistance as may be determined by the Secretary to be equitable in consideration of anticipated benefits from such improvements: *Provided*, That no part of the construction cost for providing any capacity in structures for purposes other than flood prevention and features related thereto shall be borne by the Federal Government under the provisions of this Act;]

(2) assume (A) such proportionate share, as is determined by the Secretary to be equitable in consideration of the direct identifiable benefits, of the costs of installing any works of improvement, involving Federal assistance, which is applicable to the agricultural phases of the conservation, development, utilization, and disposal of water, and (B) all of the cost of installing any portion of such works applicable to other purposes except that any part of the construction cost (including engineering costs) applicable to flood prevention and features relating thereto shall be borne by the Federal Government and paid for by the Secretary out of funds appropriated for the purposes of this Act;

(3) make arrangements satisfactory to the Secretary for defraying costs of operating and maintaining such works of improvement, in accordance with regulations presented by the Secretary of Agriculture;

(4) acquire, or provide assurance that landowners *or water users* have acquired, such water rights, pursuant to State law, as may be needed in the installation and operation of the work of improvement; [and]

(5) obtain agreements to carry out recommened soil conservation measures and proper farm plans from owners of not less than 50 per centum of the lands situated in the drainage area above each retention reservoir to be installed with Federal assistance [.]; *and*

(6) submit a plan of repayment satisfactory to the Secretary for any loan or advancement made under the provisions of section 8.

[SEC. 5. At such time as the Secretary and the interested local organization have agreed on a plan for works of improvement, and the Secretary has determined that the benefits exceed the costs, and the local organization has met the requirements for participation in carrying out the works of improvement as set forth in section 4, the Secretary is authorized to assist such local organizations in developing specifications, in preparing contracts for construction, and to participate in the installation of such works of improvement in accordance with the plan: *Provided*, That, except as to the installation of works of improvement on Federal lands, the Secretary shall not construct or enter into any contract for the construction of any structure unless there is no local organization authorized by State law to undertake such construction or to enter into such contract, and in no event after July 1, 1956: *Provided*, That in participating in the installation of such works of improvement the Secretary, as far as practicable and consistent with his responsibilities for administering the overall national agricultural program, shall utilize the authority conferred upon

him by the provisions of this Act: *Provided further,* That, at least forty-five days (counting only days occurring during any regular or special sessions of the Congress) before such installation involving Federal assistance is commenced, the Secretary shall transmit a copy of the plan and the justification therefor to the Congress through the President: *Provided further,* That any such plan (a) which includes reclamation or irrigation works or which affects public or other lands under the jurisdiction of the Secretary of the Interior, or (b) which includes Federal assistance for floodwater detention structures, shall be submitted to the Secretary of the Interior or the Secretary of the Army, respectively, for his views and recommendations at least sixty days prior to transmission of the plan to the Congress through the President. The views and recommendations of the Secretary of the Interior, and the Secretary of the Army, if received by the Secretary of Agriculture prior to the expiration of the above sixty-day period, shall accompany the plan transmitted by the Secretary of Agriculture to the Congress through the President: *Provided further,* That, prior to any Federal participation in the works of improvement under this Act, the President shall issue such rules and regulations as he deems necessary or desirable to carry out the purposes of this Act, and to assure the coordination of the work authorized under this Act and related work of other agencies including the Department of the Interior and the Department of the Army.]

SEC. 5. At such time as the Secretary and the interested local organization have agreed on a plan for works of improvement, and the Secretary has determined that the benefits exceed the costs, and the local organization has met the requirements for participation in carrying out the works of improvement as set forth in section 4, the local organization shall assume responsibility for securing engineering services, including the design, preparation of specifications, awarding of contracts, and supervision of construction, in connection with such works of improvement, and in order to properly carry out such services shall retain or employ a professional engineer or engineers satisfactory to the Secretary, and the Secretary shall reimburse the local organization for the cost of the services of such engineer or engineers as is properly chargeable to such works of improvement, except that if the Secretary determines that competent engineering services are not available he may contract for a competent engineer to provide such services or arrange for employees of the Federal Government to provide such services: Provided, That at the request of the local organization the Secretary may advance such amounts as may be necessary to pay for such services, but such advances with respect to any works of improvement shall not exceed 5 per centum of the estimated total cost of such works: Provided further, That, except as to the installation of works of improvement on Federal lands, the Secretary shall not construct or enter into any contract for the construction of any structure unless there is no local organization authorized by State law to undertake such construction or to enter into such contract, and in no event after July 1, 1956: Provided, That in participating in the installation of such works of improvement the Secretary, as far as practicable and consistent with his responsibilities for administering the overall national agricultural program, shall utilize the authority conferred upon him by the provisions of this Act: Provided further, That whenever the estimated Federal contribution to the construction cost of works of improvement in any watershed or subwatershed area shall exceed $250,000 or the works of improvement include any structure

having a total capacity in excess of twenty-five hundred acre-feet, the Secretary shall transmit a copy of the plan and the justification therefor to the Congress through the President: Provided further, That any such plan involving an estimated Federal contribution to construction costs in excess of $250,000 or containing any structure having a total capacity in excess of twenty-five hundred acre-feet (a) which includes reclamation or irrigation works or which affects public or other lands or wildlife under the jurisdiction of the Secretary of the Interior, or (b) which includes Federal assistance for floodwater detention structures, shall be submitted to the Secretary of the Interior or the Secretary of the Army, respectively, for his views and recommendations at least thirty days prior to transmission of the plan to the Congress through the President. The views and recommendations of the Secretary of the Interior, and the Secretary of the Army, if received by the Secretary of Agriculture prior to the expiration of the above thirty-day period, shall accompany the plan transmitted by the Secretary of Agriculture to the Congress through the President: Provided further, That, prior to any Federal participation in the works of improvement under this Act, the President shall issue such rules and regulations as he deems necessary or desirable to carry out the purposes of this Act, and to assure the coordination of the work authorized under this Act and related work of other agencies including the Department of the Interior and the Department of the Army.

SEC. 6. * * *

SEC. 8. The Secretary is authorized to make loans or advancements to local organizations to finance the local share of costs of carrying out works of improvement provided for in this Act. Such loans or advancements shall be made under contracts or agreements which will provide, under such terms and conditions as the Secretary deems appropriate, for the repayment thereof in not more than fifty years from the date when the principal benefits of the works of improvement first become available, with interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which the loan or advancement is made, which are neither due nor callable for redemption for fifteen years from date of issue. With respect to any single plan for works of improvement, the amount of any such loan or advancement shall not exceed five million dollars.

SEC. 9. The provisions of this Act shall be applicable to Hawaii, Alaska, Puerto Rico, and the Virgin Islands.

SEC. [8] *10.* There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, such sums to remain available until expended.

SEC. [9] *11.* This Act may be cited as the "Watershed Protection and Flood Prevention Act".

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Calendar No. 2627

84TH CONGRESS, 2d Session | SENATE | REPORT No. 2586

IMPROVEMENT OF PROCEDURES FOR THE DEVELOPMENT OF FOREIGN AIR COMMERCE

JULY 16, 1956.—Ordered to be printed

Mr. MONRONEY, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 3914]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3914) amending sections 801, 802, and 1102 of the Civil Aeronautics Act of 1938, as amended, to limit and define the powers of the President in cases involving air transportation to points overseas, and to prescribe certain procedures for the conduct of foreign air agreement negotiations, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

I. INTRODUCTION

The bill has two purposes: (*a*) To amend section 801 of the Civil Aeronautics Act of 1938 by restricting the President's power to overrule CAB certification actions to foreign air transportation cases involving national defense or foreign policy, and (*b*) to provide a statutory basis for consultation with and participation by domestic air carriers in negotiations with foreign governments for the establishment and development of international air traffic.

II. COMMITTEE AMENDMENT

On page 2, line 5, strike out all of section 1 after "approval" and substitute in lieu thereof a comma and the following:

> including in such report the action he has ordered the Board to take and his reasons therefor unless he finds such report would be contrary to the interests of national defense or foreign policy, which finding he shall communicate to the Congress.

This amendment was adopted by your committee so as to leave to the discretion of the President whether to report the specific reasons why he has chosen to disapprove a Board certification action. Under the bill, he may overrule the Board only for reasons of national defense or foreign policy. If required in every case to make a public report of the considerations prompting his decision, the President might well on occasion be put in a position of having to divulge information to the prejudice of the very interests which his action sought to protect. On the other hand, your committee did not believe that the making of a report should be left completely within the President's discretion, as suggested by executive agencies commenting on the bill. In its amended form, section 1 of the bill thus requires the President either to render the described report or a finding that such report would be contrary to national defense or foreign policy interests.

III. PURPOSES OF THE BILL

Section 1.

Section 1 of the bill amends section 801 of the Civil Aeronautics Act of 1938 by withdrawing from the President the power of review and approval of Civil Aeronautics Board certification actions in all cases involving overseas air transportation and air transportation between places in the same Territory or possession. In the field of foreign air transportation, it would specifically limit his power to overrule the Board to cases having relation to the national defense or the conduct of foreign relations. Section 1 is similar to section 27 of S. 1119, 84th Congress, 1st session, an omnibus aviation bill currently before your committee.

In its present form, section 801 of the act requires Presidential approval of any action taken by the Board with respect to certificates authorizing a domestic air carrier to engage in air transportation beyond the continental limits of the United States, or certificates allowing foreign air carriers to operate to points within the United States or its possessions. In adopting this section Congress recognized the potential significance of overseas air commerce development to the Nation's foreign relations and defense policies. To avoid any possible inconsistencies it was therefore deemed advisable to require Executive approval of all certification orders in overseas cases, whereas Board decisions affecting domestic air transportation are final, subject only to judicial review.

Although originally intended merely as a means for Executive review, granting powers to be used only in exceptional cases, section 801 has had the unforeseen but perhaps inevitable effect of transferring from the Board to the White House ultimate responsibility in every respect for the disposition of cases within its purview.

The broad extent to which the President's authority under this section has come to be construed is significantly set forth by the Supreme Court in its decision in the case of *Chicago and Southern Air Lines* v. *Waterman Steamship Corp.* (333 U. S. 103). The Court therein held that a Board order covered by section 801 is not a final disposition of the matter, but a mere "recommendation" to the President. Noting, in fact, that the Board altogether ceases to function as an arm of the Congress in such cases, and becomes virtually an organ of the executive branch, the Court states:

> Nor is the President's control of the ultimate decision a mere right of veto. It is not alone issuance of such authorizations that are subject to his approval, but denial, transfer, amendment, cancellation or suspension, as well. And likewise subject to his approval are the terms, conditions, and limitations of the order (49 U. S. C. 601). Thus, Presidential control is not limited to a negative but is a positive and detailed control, unparalleled in the history of American administrative bodies.

The practical result of this total shifting of authority has been to subject the President directly to all the burdens and pressures of air commerce regulation. Thus, he is called upon in every section 801 case to pass final judgment on the fitness, willingness, and ability of air carriers to perform the service in question—these being the fundamental statutory criteria for the issuance of any certificate. In the great majority of instances, including those covered by section 801, the decision called for must be based entirely on economic or technical considerations having no practical bearing whatsoever on national defense policy or the conduct of foreign relations.

As an example, a case might arise involving a determination as to which of two equally competent air carriers shall be certified to fly a given route between the mainland and a Territory. After a full hearing of the issues and a finding by the Board the disappointed applicant may press his suit anew at the White House; and, under present law, he need not even frame his appeal in terms of a defense or foreign policy issue. Worst of all, Presidential decisions in all such cases have been held, in the above-cited opinion by the Supreme Court, to be beyond the judicial review guaranteed by section 1024 of the act.

The harm to sound administrative and judicial procedures which this situation has created is readily apparent. Matters of an economic or regulatory nature which the Board, acting under the aegis of the Congress, is alone competent to decide and for which it alone is adequately staffed and ordered have somehow unwittingly become delegated to the Executive. Section 1 of S. 3914 seeks to correct this, first, by restricting the scope of Executive powers to those areas in which it is reasonably necessary for him to act, and second, by specifically predicating those powers on his national defense and foreign policy responsibilities. Thus stated, there should no longer be any question that the authority of the President under section 801 extends little further than the right of veto.

By limiting his authority to foreign air transportation the bill withdraws from the President the right of review of cases involving transportation between the continental United States and a Territory or possession, or between Territories and possessions, or between places in the same Territory or possession. Under the bill, Board decisions respecting such air transportation would be final, as in the case of domestic air transport. There are virtually no foreign policy considerations in this field, only American carriers are concerned, and it is believed that whatever national defense interests might be involved are no greater than those which would often apply to domestis air transportation—particularly to the large trunklines. In any event, your committee notes that executive agencies, including the Department of Defense, may appear before the Board during its

hearings on certification cases. Should a case bearing on the national defense arise, the President can certainly rely upon the members of the Board, his own appointees to give the greatest possible weight to the testimony of responsible executive officials in that field.

The bill recognizes that the President's responsibilities do require that he continue to give careful scrutiny to certain cases involving foreign air transportation. His power to review such cases for possible defense as well as foreign-policy implications is thus carefully preserved. He would, however, be required to submit to Congress a report of any instance in which he overrules a Board order as contrary to the interests of defense or foreign policy, as explained in the preceding section of this report.

Representatives of the Departments of State and Commerce, commenting on this feature of the bill, agreed that it would not result in any practical restriction of Presidential powers. They were nonetheless opposed to it, for the asserted reason that the more precise definition of those powers would not result in the hoped for rationalization of procedures or a lessening of Executive burdens. This contention was based on the assumption that any certification case dealing with foreign air transportation will, ipso facto, have some bearing on the Nation's foreign policy and therefore require Presidential review.

Aside from the fact that this is no valid reason for objecting to the bill as drawn, your committee agrees that such an assumption may be theoretically sound. By the same token, no facet of the Nation's foreign commerce can be said to be completely isolated from any effect upon official relations abroad. The extent to which any action or decision in this field need fall under direct Executive control remains always a relative and selective matter. Important considerations of foreign policy do indeed apply in the realm of international air transport; e. g., the exchange of routes, types of service, the problem of capacity, etc. But these as well as any other questions which might foreseeably bear upon national air transport policy are matters normally subject to antecedent diplomatic negotiation and agreement with the foreign government concerned. The complex pattern of bilateral and multilateral air agreements which has come into existence since the close of World War II was hardly foreseen at the adoption of the act. Today these agreements form the framework of the Nation's foreign aid policy.

In accordance with section 1102 of the act, the Board can take no action contrary to the provisions of any such agreement. Indeed it is difficult to imagine how a Board certification order involving transportation to any of the many countries with which an air bilateral agreement is in effect could be contrary to the interests of foreign policy without also being in violation of section 1102. For this reason, if no other, your committee is convinced that the bulk of cases concerning certification of individual carriers, both foreign and domestic, to engage in international air transport are and will continue to be decided solely on the statutory grounds of fitness, willingness, and ability to perform in accordance with the provisions of the act, decisions with which the President need not concern himself at all. That being so, section 1 of the bill cannot help but have the desired result of relieving the President of much unnecessary burden and restoring entirely to the Board the regulatory functions for which it was created.

Sections 2 and 3

The remaining sections of S. 3914 deal with the conduct of international air agreement negotiations. They are self-explanatory and were included in the bill to give legislative effect to recommendations made by your committee's special subcommittee for the study of negotiations leading to the 1955 air agreement with Germany. The subcommittee's recommendations and the background thereof are fully set forth in its report on this subject, dated April 10, 1956 (S. Rept. No. 1875).

IV. AGENCY COMMENTS

Extensive comments on S. 3914 were received by your committee from the Department of State, the Department of Commerce, the Civil Aeronautics Board, and the General Accounting Office. A special memorandum on the bill was also submitted by the Executive Office of the President. These documents are included in full below.

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

Washington 25, D. C.

JUNE 18, 1956.

ADMINISTRATION POSITION CONCERNING S. 3914, A BILL TO AMEND SECTIONS 801, 802, AND 1102 OF THE CIVIL AERONAUTICS ACT OF 1938, AS AMENDED

S. 3914 has two major features:

I. LIMIT SCOPE OF PRESIDENTIAL REVIEW

S. 3914 would require Presidential approval for certificates of foreign air transportation and for permits to foreign air carriers "in any case which he determines may affect the national defense or the foreign policy of the United States." The President is required to report to the Congress his reasons for withholding approval of recommendations of the Civil Aeronautics Board.

This involves three major changes from present law: (*a*) It would limit Presidential review to cases which may affect the national defense or foreign policy. (*b*) It would eliminate Presidential review for cases involving overseas and territorial air transportation. (*c*) It would require the President to report to the Congress his reasons for disapproval.

Major reasons for opposing this provision include:

(*a*) The language limiting the President's power of approval or disapproval to those cases which may involve considerations of national defense or foreign policy would serve little, if any, useful purpose. Because all overseas air transportation cases may affect the national defense or the foreign policy of the United States, the President would still have no choice but to consider each as it arose. If the bill is intended to limit the President's review to defense and foreign policy factors, the present language would have to be amended to so provide. However, there would seem to be nothing in existing law which would prevent the President from limiting his review to factors which he determines to involve foreign policy or national

defense, should he decide that such a limitation would be in the national interest.

(*b*) The termination of the President's authority to approve cases involving overseas and territorial air transportation would appear inadvisable, since national defense considerations may plan an important role in such decisions.

(*c*) It would be inappropriate for legislation to require the President ot report to the Congress his reasons for withholding approval from a recommendation of the Civil Aeronautics Board. For the President to have to spell out the national defense or foreign policy factors which prompted his action could be detrimental to the security of the United States and the effective conduct of our foreign policy.

II. PARTICIPATION BY PRIVATE AIRLINES IN AIR TRANSPORT NEGOTIATIONS

S. 3914 would make the participation by private airlines in formal negotiations involving air transport agreements a statutory requirement and prescribe, among other things, that a representative of private airlines be a duly accredited member of United States delegations.

Major reasons for opposing this provision include:

(*a*) The enactment of required procedures with respect to international negotiations on air transport matters would destroy the flexibility which is frequently essential to obtain agreements in the best interests of the United States.

(*b*) At the present, the airlines are consulted by the interested Government agencies and, if consistent with the national interest, are accredited as observers on United States delegations. To the extent that procedures prescribed in S. 3914 are now generally followed, legislation is unnecessary.

(*c*) International relations are sometimes of a nature which would make private carrier representation detrimental to the United States.

(d) The United States interests in air transportation are not confined to the air transport industry, but also include the interests of the traveling public, of the areas served, and sometimes of competing forms of transportation. The bill would give the air transport industry a privileged position.

(*e*) The diverse interest of United States airlines preclude the establishment of a unified air carrier position in many cases.

(*f*) A duly accredited member of a United States, delegation is bound by the United States position. Since the United States position represents the composite views of Government agencies and different segments of the United States public, the airline representative of the United States delegation may have to defend a position which may be inconsistent with that of his industry, and he may frequently be faced with a conflict of interests.

(*g*) The United States position is at times based on confidential foreign policy considerations which could not be divulged to private parties.

DEPARTMENT OF STATE,
Washington, June 11, 1956.

Hon. WARREN G. MAGNUSON,
United States Senate.

DEAR SENATOR MAGNUSON: Reference is made to your letter of May 24, 1956, requesting the comments of this Department on S. 3914, a bill to amend sections 801, 802, and 1102 of the Civil Aeronautics Act of 1938, as amended.

The first section of S. 3914 proposes to amend section 801 of the Civil Aeronautics Act of 1938, as amended. The proposed amendment would eliminate the requirement of Presidential approval on certificates authorizing an air carrier to engage in overseas transportation or air transportation between places in the same territory or possession. It would also limit the requirement for Presidential approval on certificates authorizing United States air carriers to engage in foreign air transportation or permits to foreign air carriers for operations in foreign air transportation to cases in which the President determines that the national defense or the foreign relations of the United States would be affected by the transportation involved. In addition the amendment would include a requirement that in any case in which the President did not approve the proposed decision of the Board, he should report to the Congress giving the reasons for his disapproval and the nature of the action which he proposed.

This Department recommends that the proposed amendments not be enacted. It is believed that the President in the exercise of his responsibilities relating to the national defense and to the interest of the United States in connection with international relations should have an opportunity to review any case dealing with operations beyond the continental United States. It is further believed that the President should not be required to report his reasons for approving and disapproving proposed decisions of the Board except to the extent that he in his own discretion might consider such a report valuable to the welfare of the Nation.

Section 2 of the bill would amend section 802 of the act by adding to that section a sentence stating that international negotiations on aviation matters shall be conducted in accordance with principles which it is proposed to add to section 1102 of the act. This Department recommends that the amendment to section 802 and the proposed addition to section 1101 of the act not be enacted. International negotiations on air transport matters as well as other international negotiations require that the executive branch of the Government be able to follow such procedures and apply such information with regard to international relations, the public interest of the United States, and the national defense as may be pertinent in connection with any particular negotiation. The enactment of required procedures with respect to such negotiations would destroy the flexibility which is many times the essential qualification on which the ability to obtain an agreement in the best interests of the United States may depend. Therefore from the standpoint of general principle this Department recommends against enactment of such required procedures.

Paragraph (1) of the proposed subparagraph (b) of section 1102 of the Civil Aeronautics Act would require procedures which are now generally followed in connection with air transport negotiations. It is normal practice of the Civil Aeronautics Board to advise the air carriers

of the United States of pending negotiations and to meet with representatives of those carriers prior to the formation of the Board's recommendations to this Department with regard to such negotiations. In most instances representatives of this Department attend the sessions at which the carriers set forth their views whether those sessions consist of discussions at a staff level in the Civil Aeronautics Board or are of a more formal nature consisting of meetings with the Board members. It has moreover been the practice of the Civil Aeronautics Board to consult with representatives of the carriers during the course of such negotiations. Recognizing the responsibilities of the Civil Aeronautics Board as established in the Civil Aeronautics Act of 1938, as amended, this Department normally does not initiate meetings with carrier representatives. Nevertheless carrier representatives are accorded an opportunity to discuss their interests in negotiations with officers of this Department when such an opportunity is sought. In this connection it should also be noted that the air carriers customarily make available to this Department copies of letters which are sent to the Civil Aeronautics Board with regard to matters relating to international air transport matters as well as writing directly to the Department when they so desire. This Department makes no attempt to reach decisions on matters the primary responsibility for which rests with the Civil Aeronautics Board. Insofar as the views expressed by the carriers relate to matters coming within this Department's competence they are considered along with other pertinent matters.

Considering the extent to which this Department and the Board consult with the representatives of the airlines and take their comments into account both prior to, and during the course of, international discussions and negotiations, it is not believed that the enactment of the proposed section 1102 (b) (i) would create any actual change in the procedures now being followed. Nevertheless the Department does not believe that it would be wise to solidify these procedures into legislation, thus making impossible the flexibility that might be required in certain international situations where the following of such procedures might in fact react to the detriment of the United States.

Section 3 of S. 3914 also provides for inserting in section 1102 a new subparagraph (b) (2), providing that a representative of the air carriers shall be made a duly accredited member of the United States delegation in any formal negotiations; shall be entitled to attend all negotiating sessions and meetings of the delegation; and shall be given a fair and reasonable opportunity to consult with his principals during and throughout the negotiations and before any ultimate decision is reached. It has been the general practice of the Department to provide an opportunity for a representative of the air carriers to serve as an observer on delegations of the United States in formal negotiations on air transport matters. It is the intention of the Department to continue such practice to the extent feasible. However, it is recommended that this practice not be made the subject of legislation requiring it to be followed regardless of the circumstances of the negotiations. In addition to the fact that international relations may from time to time be of such a nature that carrier representation even in an observer capacity would react detrimentally to the United States, there is the fact that in many instances the diverse interests of United States airlines preclude the establishment of a unified air carrier position. Experience has shown that it is in fact increasingly

difficult to obtain unanimity among the airlines. Consequently air carrier representation on a basis such that the representative can speak for the industry as a whole is rarely obtainable. In this connection it may be noted that in the absence of unanimity a representative of the Air Transport Association cannot speak for the airline industry although he may observe and report to the members of that association. It should also be noted that in cases where an affected airline is not a member of the Air Transport Association that association cannot adequately represent the industry even though all the members of the association are in fact in agreement on the position that should be taken by the United States. Therefore the observer capacity in which air transport industry personnel have been serving on United States delegation for some time is in fact the most advantageous position that can in many instances be accorded to those representatives.

It should also be noted that when any person, whether a representative of the United States Government or a non-Government representative, becomes a "duly accredited member" of any United States delegation he becomes bound by the United States position. This position, representing as it does the composite views of various agencies of the United States Government and various segments of the United States public, is almost without exception a compromise position. Consequently, were a representative of the airlines to serve as a duly accredited member of the United States delegation and as such to speak in the course of the negotiations, he would be obligated by reason of his accreditation to speak in terms of the accepted United States position even though, in so doing, he spoke in a manner which was not completely acceptable to the airline industry or even to the segment thereof which he might represent. It is true that as an observer the representative of the airlines does not speak in the negotiating sessions. He has, however, the opportunity to attend all of those sessions and he had likewise the opportunity to report the events of those sessions to his principals.

The proposed paragraph would also contain the requirement that the representative of the air carriers may attend "all * * * meetings of the delegation." Normally an air transport industry representative who serves as an observer on a delegation does attend meetings of the delegation. However, Government representatives serving on delegations have duties and responsibilities which in many instances require such representatives to confer and, sometimes, to discuss matters which are not public knowledge and which cannot in the interests of the security of the United States and its international relations be divulged to persons outside the Government. Therefore, a requirement that nongovernmental personnel be included in all delegation meetings is in effect a requirement that the delegations not take into account in some instances material which should properly be brought to bear on the subject.

In connection with the proposed requirement that a representative of the air carriers should be made a duly accredited member of the United States delegations it should be noted that the United States interests in air transport negotiations are not confined to the air transport industry or to the portion of it which may be directly affected. The United States Government representatives are charged with the responsibility for taking into consideration the interests and

well-being of all segments of the United States. In connection with air transport negotiations, these interests include the interests of the traveling public, the interests of the areas served by air transport operations, and the interests of the air transport industry. Although the Government makes every effort to balance conscientiously all of these interests so that the welfare of the United States as a whole will be served, it has consulted intensively with the representatives of the airlines, as has been noted previously in this letter, primarily because of the direct commercial interests of the airlines which will be affected by the principles internationally applicable to air transport services and the routes provided for in air transport agreements. Special efforts have been made to consult with this industry in connection with such international negotiations. However, this Department cannot support legislation which would result in giving to the air transport industry a privileged position in which it would have influence paramount to that of the public which the air transport industry serves and of the communities of the United States which rely upon it for communication with other parts of the world.

In view of the above comments this Department urges that the proposed legislation contained in S. 3914 not be enacted.

The Bureau of the Budget advises that there is no objection to the submission of this report to the committee and that the enactment of S. 3914 would not be in accordance with the program of the President.

Sincerely yours,.

ROBERT C. HILL,
Assistant Secretary
(For the Secretary of State).

THE SECRETARY OF COMMERCE,
Washington 25, D. C., June 12, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This is in reply to your letter of May 24, 1956, in which you invite our comment concerning S. 3914, a bill to amend sections 801, 802, and 1102 of the Civil Aeronautics Act of 1938, as amended. S. 3914 would curtain the authority which the Civil Aeronautics Act gives the President to review certificates authorizing foreign and overseas air transportation and foreign air carrier permits. The President's authority to review certificates affecting overseas air transportation and air transportation within our Territories would be eliminated. The bill would also impose certain requirements regarding consultation with, and representation from, the air transportation industry in connection with the negotiation of treaties, conventions, and agreements affecting air navigation.

We believe that these proposals, if enacted into law, would be contrary to the continued sound and orderly development of our air commerce which has been of so much benefit to our air carriers. Section 801 of the Civil Aeronautics Act now requires that the President approve any action which the Civil Aeronautics Board may propose be taken in connection with a foreign air carrier permit, or a

certificate of public convenience and necessity authorizing a United States flag air carrier to provide air transportation to a foreign country, to a Territory of the United States, or within a Territory of the United States. This approval may, if necessary, be exercised as an affirmative determination by the President directing the action to be taken by the Civil Aeronautics Board, if the recommendations of the Board should be inconsistent with the views of the President as to the action which may be necessary in the best interests of the United States. In the comparatively few instances where the President has acted to modify proposals of the Civil Aeronautics Board there has generally been notice of the nature of the President's determination including, insofar as practicable consistent with the national interest, a statement of the reasons for such action.

We realize that the authority granted to the President in these cases is unusually broad, but we believe that this result is a necessary realization of the practical situation which arises. The air transportation services included under Section 801 involve, to an exceptional degree, our relations with foreign governments, the administration of our Territories, and the needs of our national defense. All of these are matters which are peculiarly and specially the concern of the President, and it has been generally recognized that his freedom of action in these matters is vital if we are to best effectuate the requirements of our national interest. It would not benefit our air transportation industry if the President's freedom to act to meet the necessities of each particular and presently unpredictable situation which might arise in the future were limited by procedural restrictions such as are here proposed.

We agree with the conclusions recently adopted by your committee that fullest consideration ought to be given to the business needs of our air transportation industry in any negotiations affecting those interests. To a considerable degree there is a good deal of consultation with the industry on these matters at the present time. To the extent that this may not have been adequate in some cases, we believe that corrective action ought to be taken; but such action can best be taken by the Executive acting within the scope of his authority and consistent with his responsibility to further the national interest in the conduct of our foreign relations and the assurance of our national safety. Enactment of legislation such as is here proposed would only create uncertainty and divided responsibilities leading to conflict between agencies of the Government and between the Government and the industry. Such a result would be harmful most of all to the air transportation industry.

United States-flag air transportation has developed and grown throughout the world under our present concept of regulation and conduct of foreign relations. The air transportation industry has gone too far since 1938, its importance to our economy is too great, and the investment of our citizens in this industry too substantial to justify the risk of experimentation with regulatory and negotiating functions which have worked with substantial success in the past. We feel certain that whatever corrective action needs to be taken can and will be taken within the scope of present executive authority without the need for restrictive legislation. We feel that legislative enactment such as is here proposed would seriously hamper the ability of the Executive to act in the best interests of the United States without in any way being helpful to the air transportation industry.

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We appreciate very much the opportunity to express these views, and if we can be of any further help please feel free to call upon us.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your committee and that enactment of S. 3914 would not be in accord with the program of the President.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

CIVIL AERONAUTICS BOARD,
Washington 25, June 12, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: This is in reply to your letter of May 24, 1956, asking the Board for a report on S. 3914, a bill to amend sections 801, 802, and 1102 of the Civil Aeronautics Act of 1938, as amended.

Under the existing provisions of section 801 of the Civil Aeronautics Act it is required that the issuance, amendment, or transfer by the Board of a certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between the same Territory or possession, or any permit issuable to any foreign air carrier, shall be subject to the approval of the President. The first section of S. 3914 would amend these provisions by (1) eliminating the requirement for Presidential approval in the case of overseas and Territorial air transportation, with the result that the decisions of the Civil Aeronautics Board in these areas would be final, as they now are in the case of domestic air transportation; (2) limiting the President's power in approving certificates for foreign air transportation and in approving permits to foreign air carriers to cases which he determines may affect the national defense or foreign policy of the United States; and (3) adding a statutory requirement that the President report to Congress any case in which he withholds approval, with his reasons and stating the approved action which he has ordered the Board to take.

The Board believes that the provisions requiring the President to report to Congress those cases in which he withholds his approval, to give his reasons therefor, and to state what action he has ordered the Board to take, are objectionable. The only cases subject to Presidential review under the terms of the bill are those which the President determines may affect national defense or foreign policy, and the Board strongly recommends against the enactment of provisions calling for Presidential justification of his actions in these matters. Except for the provision requiring the President to report to Congress, the Board believes that the legislation is feasible in that it would relieve the President of the burden of examining and passing upon complex economic matters for which the Board is staffed and to which the Board devotes a major part of its activity. The proposed transfer of final responsibility as provided in the bill would not add significantly, if at all, to the Board's present workload.

Sections 2 and 3 of S. 3914 relate to the negotiation of agreements with foreign governments for the establishment of air routes. Section

2 provides "Such negotiations shall be conducted in accordance with the principles set forth in section 1102 (b) of this Act." Section 3 amends the present section 1102 by adding section 1102 (b) which requires that the negotiations shall be conducted in accordance with the following principles:

"(1) The Board shall advise any air carrier whose interests it knows or reasonably should know will be affected, and shall fully consult with its representatives, both prior to and during any such discussions or negotiations.

"(2) A representative of the air carriers shall be made a duly accredited member of the United States delegation to any formal negotiations. He may attend all negotiating sessions and meetings of delegation, and shall be given a fair and reasonable opportunity to consult with his principals during and throughout the negotiations and before any ultimate decision is reached."

In a letter dated April 3, 1956, to the chairman of the Subcommittee on International Air Agreements of the Senate Committee on Interstate and Foreign Commerce, the Board set forth in detail the historic procedure followed to advise and consult with all interested United States air carriers both prior to and during any discussions or negotiations relating to air transport agreements, and its current practice of requesting the industry to designate a representative to advise the United States delegation and attend meetings as an observer-member of the United States delegation. A copy of this letter is attached. The Board believes that the procedure therein set forth complies fully with the intent of the proposed section 1102 (b) (1) and makes such legislation unnecessary.

With respect to the proposed section 1102 (b) (2), it is significant that the air carriers represent only one of many groups interested in the conclusion or modification of air transport agreements. In negotiating with foreign countries the Board must consider the overall public interest in accordance with the standards set forth in section 2 of the act. This requires that in addition to the interests of the individual air carriers, there must also be taken into consideration the interests of particular cities proposed for service. Likewise, certain of the various Government agencies can properly claim an interest in the negotiations with foreign governments. The interests of these other groups are equally as important in their respective fields as are those of the air carriers. If a representative of the air carriers is made a duly accredited member of the United States delegation to any formal negotiations, it is difficult to see how other interested groups could be denied the same privilege.

From the history of the proposed legislation it is assumed that section 1102 (b) (2) contemplates that a member of the Air Transport Association will represent the United States air carriers as a member of the United States negotiating delegation. If this assumption is correct, the Board would like to point out that not all United States air carriers are members of the ATA, and that the interests of the nonmember carriers might not be adequately represented by the ATA.

One of the main values of carrier representation at negotiating sessions is to facilitate and insure the reporting of developments to interested carriers and to establish one spokesman for conveying the reactions and suggestions of the interested air carriers to the negotiat-

ing delegation. In such a role the carrier representative is serving the interests of the air carriers who are his joint employers. If the carrier representative also assumes the role of a fully accredited member of the delegation, he would frequently be faced with a conflict of interests. As the servant of the carriers, he would feel compelled to urge their interests, but in his position as a member of the delegation of the United States he would be expected to give primary consideration to overall interests which might be inconsistent with those of the air carriers. Thus the industry representative would be likely to find himself in an incompatible and indeed untenable situation.

Moreover, due to the conflicting interests of the carriers themselves, there have been and will continue to be many instances when the positions taken by the individual carriers cannot be reconciled. In the course of the hearing which preceded the drafting of this bill the ATA representative was asked, "what happens when 3 out of 44 airlines which are directly affected object and the others say it is O. K.?"; and he replied: "The ATA usually steps out of the picture." Thus, whenever the carriers are not unanimous, the role of the ATA is that of reporter only and the carrier representative in such cases would be an ineffective member of the negotiating delegation.

In conclusion, the Board believes that procedural legislation will not resolve the difficulties which gave rise to the bill. The problem arises out of the fact that no agreement will satisfy each and every United States air carrier. Those who receive tangible benefits from it will favor it; those who can foresee no tangible benefits for themselves will consider it unreasonable. There will always be dissatisfaction on the part of those carriers which stand to lose some part of their traffic, despite the fact that the agreement itself will further the overall interest of the United States.

The Board has given very serious study over the years to the most effective means of obtaining as much carrier participation as possible in the development of United States negotiating positions. In the negotiation of the air transport agreement with Canada in 1949, a carrier representative was a fully accredited member of the United States delegation. Nevertheless, the carriers objected so strenuously to the terms of that agreement that it was scrutinized by Congress. On the other hand, in the 1955 negotiations with Germany, an ATA representative attended the negotiating sessions as an industry observer, yet this agreement, too, was scrutinized by Congress as a result of carrier opposition.

It seems clear that the basic difficulty is not one of industry representation but lies in the economic aspects of airline operations. You may be sure that the Board intends to continue to consult the air carriers prior to and during discussions and negotiations with foreign governments in order to obtain information, which only the carriers can furnish, regarding the impact on their operations of proposed route grants to foreign countries. These economic data are essential to a determination of the economic balance which the Board attempts to strike in recommending any route exchange.

It is common knowledge that our international relations with foreign governments have become increasingly complicated. Likewise the Board's duties in the negotiation of bilateral agreements have become more and more difficult even in the absence of restrictive requirements as to procedure. To impose stautory restrictions as

contemplated by S. 3914 will surely add to these difficulties and place additional burdens upon the Board at a time when the Board needs all the assistance it can get to effectively cope with the formidable problems it is facing in the foreign field.

Accordingly, the Board recommends against the enactment of sections 2 and 3 of S. 3914.

The Bureau of the Budget advises that there is no objection to transmittal of this report and that enactment of S. 3914 would not be in accord with the program of the President.

Sincerely yours,

JAMES R. DURFEE,
Chairman.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington 25, June 1, 1956.

B–102817

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate.

DEAR MR. CHAIRMAN: Further reference is made to your letter of May 24, 1956, requesting the comments of the General Accounting Office concerning S. 3914, 84th Congress, 2d session, entitled "A bill to amend sections 801, 802, and 1102 of the Civil Aeronautics Act of 1938, as amended."

In brief, the bill proposes to amend section 801 of the act by eliminating the requirement that the President of the United States approve the issuance of certificates to overseas carriers, thus apparently placing such carriers in the same category as domestic airlines. Also, while the proposed amendment continues to require Presidential approval of the issuance of certificates to air carriers engaged in foreign air transportation and permits issued to foreign air carriers, it requires the President to report to the Congress any case in which he withholds such approval and to include in such report his reasons for withholding approval and what approved action he has ordered the Board to take in such case. Sections 802 and 1102 of the act likewise are amended to provide for the representation of interested and affected air carriers at all negotiating sessions and meetings of representatives of foreign countries for the conclusion or modification of any treaty, convention, or agreement regarding the establishment or development of air navigation, including air routes and services.

It is clear that the foregoing proposals pertain to specific adjudicatory and administrative processes of both the Civil Aeronautics Board and the President of the United States within the area of foreign air commerce and, as such, do not directly involve fiscal operations affecting the functions or jurisdiction of this Office. In this connection, attention is invited to the following excerpts from the case of *Chicago & Southern Air Lines, Inc.* v. *Waterman Steamship Corp.* (333 U. S. 103), wherein the Supreme Court of the United States, in discussing this matter, stated:

"In the regulation of commercial aeronautics, the statute confers on the Board many powers conventional in other carrier regulation under the congressional commerce power. They are exercised through usual procedures and apply settled standards with only customary

administrative finality. Congress evidently thought of the administrative functions in terms used by this Court of another of its agencies in exercising interstate commerce power: 'Such a body cannot in any proper sense be characterized as an arm or an eye of the executive. Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control' (*Humphrey's Executor* v. *United States*, 295 U. S. 602, 628). Those orders which do not require Presidential approval are subject to judicial review to assure application of the standards Congress has laid down.

"But when a foreign carrier seeks to engage in public carriage over the territory or waters of this country, or any carrier seeks the sponsorship of this Government to engage in overseas or foreign air transportation, Congress has completely inverted the usual administrative process. Instead of acting independently of executive control, the agency is then subordinated to it. Instead of its order serving as a final disposition of the application, its force is exhausted when it serves as a recommendation to the President. Instead of being handed down to the parties as the conclusion of the administrative process, it must be submitted to the President, before publication even can take place.

* * * * * * *

"* * * The President also possesses in his own right certain powers conferred by the Constitution on him as Commander in Chief and as the Nation's organ in foreign affairs. For present purposes, the order draws vitality from either or both sources. Legislative and executive powers are pooled obviously to the end that commercial strategic and diplomatic interests of the country may be coordinated and advanced without collision or deadlock between agencies.

* * * * * * *

"* * * The President, both as Commander in Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the Government, executive and legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry. * * *"

In the light of the foregoing, we believe the matter to be one of policy for determination by the Congress and, accordingly, we have no recommendation to make.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

V. CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

SECTIONS 801 AND 802 OF THE CIVIL AERONAUTICS ACT OF 1938, AS AMENDED (52 STAT. 1014; 49 U. S. C. 601, 602)

SEC. 801. The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in [overseas or] foreign air transportation, [or air transportation between places in the same Territory or possession,] or any permit issuable to any foreign air carrier under section 402, shall be subject to the approval of the President *of the United States in any case which he determines may affect the national defense or foreign policy of the United States. The President is requested to report to the Congress any case in which he withholds such approval including in such report the action he has ordered the Board to take and his reasons therefor unless he finds such report would be contrary to the interests of national defense or foreign policy, which finding he shall communicate to the Congress.*

SEC. 802. The Secretary of State shall advise the Board of, and consult with the Board concerning, the negotiation of any agreements with foreign governments for the establishment or development of air navigation, including air routes and services. *Such negotiations shall be conducted in accordance with the principles set forth in section 1102 (b) of this Act.*

SECTION 1102 OF THE CIVIL AERONAUTICS ACT OF 1938, AS AMENDED, (52 STAT. 1026; 49 U. S.C. 672)

SEC. 1102. (*a*) In exercising and performing its powers and duties under this Act, the Board shall do so consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries, shall take into consideration any applicable laws and requirements of foreign countries and shall not, in exercising and performing its powers and duties with respect to certificates of convenience and necessity, restrict compliance by any air carrier with any obligation, duty, or liability imposed by any foreign country; Provided, That this section shall not apply to any obligation, duty, or liability arising out of a contract or other agreement, heretofore or hereafter entered into between an air carrier, or any officer or representative thereof, and any foreign country, if such contract or agreement is disapproved by the Board as being contrary to the public interest.

(*b*) *Discussions or negotiations with representatives of a foreign country or foreign countries for the conclusion or modification of any treaty, convention, or agreement regarding the establishment of development of air navigation, including air routes and services, shall be conducted in accordance with the following principles:*

(1) The Board shall advise any air carrier whose interests it knows or reasonably should know will be affected, and shall fully consult with its representatives, both prior to and during any such discussions or negotiations.

(2) A representative of the air carriers shall be made a duly accredited member of the United States' delegation to any formal negotiations. He may attend all negotiating sessions and meetings of delegation, and shall be given a fair and reasonable opportunity to consult with his principals during and throughout the negotiations and before any ultimate decision is reached.

O